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ABSTRACT

Addressed to leaders of defender offices and inmate legal services programs, this document provides information with which to implement the paralegal concept. Stated objectives of the manual are as follows: (1) To tell administrators where successful projects are, (2) to steer administrators to other sources of information, (3) to describe optimum paralegal roles in defender offices and corrections legal services programs, and (4) to describe methods for hiring, training, and supervising paralegals. Chapter 2 of the manual covers defender paralegal services from arrest through appeals. Chapter 3 deals with paralegal services for correctional inmates and covers a broad body of criminal, civil, and administrative law. Chapter 4 discusses guidelines in planning to use paralegals, and chapter 5 discusses training new paralegals. Appendixes comprise approximately two thirds of the manual and are titled Excerpts from "The Trial Assistants' Manual" Metropolitan (Portland) Public Defender); Excerpts from the Paralegal Manual Prisoners' Rights Project (Massachusetts); A "Defender/Corrections Aide Career Lattice"; The "Paralegal Specialist Series," United States Civil Service Commission; Institutions Providing Educational or Training Programs for Paralegals; and Opening New Case Files: The "Client Information Form" and the "Multi-Processor Form." (TA)

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PRESCRIPTIVE PACKAGE

PARALEGALS: A RESOURCE FOR PUBLIC DEFENDERS AND CORRECTIONAL SERVICES

By

John Hollister Stein

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FOREWORD

A significant development in the practice of law in recent years has been the growing use of paralegals to assist in the provision of legal services. This Prescriptive Package offers tested suggestions to public defenders and inmate assistance programs on how to improve legal services through employment of paralegals. It shows how the skills of paralegals, developed primarily in private practice, can be utilized by public-funded law offices to relieve the heavy workloads that have so often been a necessary and traditional way of life.

Gerald M. Caplan
Director
National Institute of Law
Enforcement and Criminal Justice

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I would like to acknowledge the substantial contributions of Stephen B. Rosenberg, Bert H. Hoff and my colleague, Richardson White, Jr., to the preparation of this manual; to my other advisors, J. Michael Keating, Jr., Deputy Director of the Center for Correctional Justice; Prof. William P. Statsky of the Antioch Law School; Norman Lefstein, former Director of the Public Defender Service for the District of Columbia and currently on the faculty of the University of North Carolina Law School; John R. Kramer of the Georgetown Law School; Louis George Biondi of the staff of LEAA's National Institute; and Ms. Beth Lynch of the National Legal Aid and Defender Association.

Special thanks are due Ms. Lynch and Marshall J. Hartman, National Director for Defender Services at NLADA. Not only did they and their colleagues offer advice and information, but they provided the good offices of that professional association, so that in many respects this manual represents a cooperative venture between Blackstone Institute and the National Legal Aid and Defender Association.

Finally, I want to express my sincere gratitude to the directors and staff of the offices visited on this project and its predecessor project (Stein, Hoff and White, *Paralegal Workers in Criminal Justice Agencies: An Exploratory Study*, Blackstone Associates, September, 1973, a project supported by LEAA). While too numerous to mention, these lawyers and paralegals contributed whatever creative benefits are to be found upon the pages that follow. I owe an indirect obligation to a similar group of lawyers and paralegals who helped prepare a companion manual to this one (Stein and Hoff, *Paralegals and Administrative Assistants for Prosecutors*, Blackstone Associates, November, 1974, a project supported by LEAA in collaboration with the National District Attorneys' Association); Chapters Four and Five of this manual are adaptations of sections of the Prosecutors' manual.

All in all, the contributions of others to the preparation of this manual were so substantial that the pronoun "I" seemed out of place in the text, and "we" became the "authors" of personal comments and recommendations. The reader should be admonished, however, that only the virtues of the manual can be given group responsibility; its demerits belong solely to the undersigned.

John H. Stein
January, 1976

PREFACE

This manual is directed to the leadership of public defender agencies and inmate legal assistance programs. It offers them practical suggestions on how to improve the services of their offices through the employment of so-called "paralegals." Its publication is very timely.

The members and staff of the National Legal Aid and Defender Association have been expanding our professional horizons over the last several years. From the beginning, NLADA's mission has been directed to helping that dedicated sector of the legal profession which specializes in serving low-income citizens. But now all of us see that the need is not only to help these attorneys improve their specialized legal skills. It is also important to help them in their roles as administrators of major public service agencies. Accordingly, more and more of NLADA's services and publications are aimed at program directors in their capacities as planners and administrators.

This volume is a helpful addition to that new literature. The men and women who are responsible for administering criminal defense services are increasingly using paralegals to help their offices do their work more efficiently and effectively. Paralegals are seen to be a crucial ingredient in what has come to be called a modern "legal services delivery system."

The manual treats paralegals as all those *non-lawyer assistants who can perform responsible, less-than-professional work which has traditionally been performed by lawyers*. Defined in the negative, the subject of the manual is that new breed of lawyer assistants who are not secretaries, investigators, or traditional law clerks. It fleshes out this description with examples of dozens of practical jobs which paralegals are actually performing in defender offices and inmate legal services programs. And it offers sound advice on how to recruit, train, and supervise paralegals.

Perhaps most gratifying are the continuous references throughout the manual to programs where the paralegal concept is being successfully implemented. This is another indication that my professional colleagues are a lively and creative group — and the continuous citation of these innovative programs very much helps interested readers to learn from each other.

Finally, I particularly welcome the comprehensive scope of the manual. It is no accident that public defenders are increasingly offering services to those clients who have been convicted of crime. All of us who are attempting to meet the legal services needs of low-income Americans are attempting to break down distinctions between "civil" and "criminal" law, or, in this manual, pre- and post-conviction service needs. In our expanding efforts to serve the "whole client," we are finding that paralegals are effective bridges between legal specialties — as the manual demonstrates.

Although NLADA has not been called on to officially "endorse" the publication, I am pleased that we at NLADA were able to help in its creation, and I warmly recommend it to my colleagues in public defender offices and inmate legal services programs.

Marshall J. Hartman,
National Director for Defender Services
National Legal Aid and Defender Association

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CHAPTER I. INTRODUCTION

1.1 The Paralegal Movement and the Reformation of Legal Services

The practice of law in America has changed precious little over the centuries. Were Abraham Lincoln to re-join the legal profession today, he would find that the reach of the law had vastly expanded over the past 130 years, but that the manner in which lawyers went about their work was not significantly different. Despite the addition of a secretary, an improved law library, and some new office machines, the modern counterpart to Mr. Lincoln's law partnership remains even now a producer of hand-crafted products and expensive personal services, using very traditional service-delivery methods.

But the odds are the partners of that hypothetical law firm are right now contemplating an alteration in the staffing of the firm through the employment of a non-lawyer assistant, or "paralegal", to help them do the work of the office. That change, which now seems inevitable, also looks as though it will ultimately contribute to a radical shift in the way American lawyers render their professional services.

What is so "inevitable" about the use of paralegals? What is so "radical" about the implications of these new workers? And how does this relate to the provision of legal services to people accused or convicted of crime? Before turning to this last question, which is the topic of this manual, it is worth examining the background of our subject.

Although the paralegal concept is an old one—witness the high value long accorded experienced legal secretaries who do far more than secretarial work — the very term "paralegal" is quite new, as is the rapidly growing workforce which uses that title. Having been a student of the paralegal phenomenon for the past seven years, the author has felt the composite growth of this field in a very immediate way.

Put yourself in my shoes for a minute:

- When working on our first study in 1968,[1] we found that the neighborhood legal services program we were examining had a complement of secretaries and investigators, but no lay staff resembling what is generally meant by paralegals. Now that program and hundreds of others like it have a sizeable number of paralegals.
- Also, in 1968, we learned that the largest law firm in Washington, D.C., where our study was being conducted, had a social worker on its staff, an anomaly at least worth noting to our audience of precedent-minded lawyers. Two years later, there were five paralegals employed by the seven largest firms in that city. Then, in a 1975 survey of the ten largest law firms in Washington, we discovered that they had between them over 150 employees whom the offices called paralegals.[2]
- One of the participants in a 1970 conference on paralegals, which we conducted for Office of Economic Opportunity's Legal Services Program[3], was a director of the Institute for Paralegal Training, only the second institution in the country offering paralegal education or training at that time. Today, in 1975, we have learned that there are exactly as many such vocationally oriented programs now in place or on the planning boards around the country

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[1] White and Stein, *Paraprofessionals in Legal Services Programs: A Feasibility Study*, University Research Corporation, Washington, D.C., 1968. (A report on a research project for the Office of Economic Opportunity.)

[2] Telephone survey, August 1975.

[3] Stein, ". . .To Develop a Coherent Policy for Using Legal Paraprofessionals," Dixwell Legal Rights Association, New Haven, Conn., 1971. (A report of the Blackstone Associates/OEO Office of Legal Services Conference on Legal Paraprofessionals, Airlie House, Warrenton, Va., July 24, 25, 1970.)

as there are accredited law schools (161 and 161, respectively).[4]

- In short, when we first concluded that paralegals should be welcomed by practitioners and consumers of legal services, there were, we supposed, several hundred, perhaps a thousand or two, of these workers around the country. Seven years later, it is now estimated that there are over 70,000 paralegals around the country, of whom 20,000 work for publicly supported agencies.[5]

These are just a few indicators of an outburst of change within the bar which, given its proudly conservative traditions, is quite extraordinary. The practical upshot of all this is that the average reader of this book is probably a lawyer who has certainly heard of paralegals, who understands them to be a class of lawyer assistants who are different from investigators and secretaries, who is probably well disposed towards the idea of using paralegals, and indeed may already employ such workers. Therefore, the manual is light on theoretical argumentation and heavy on describing practical applications of the paralegal concept for an audience of planners and administrators of public defender and inmate legal assistance programs.

What gives the idea such a powerful appeal is that busy lawyers have discovered that they can delegate to trustworthy assistants a considerable amount of work which must or should be done, but does not engage their highest professional skills. Many attorneys in private practice have found that this kind of delegation makes their work not only professionally more rewarding, but carries financial rewards as well. Their salaried counterparts in publicly-supported law offices find that paralegals can make the office more productive and effective. "Effective" in this sense means that paralegals can perform some very useful services beyond that which even the most conscientious prosecutor, defender or legal services attorney would, or should, given his training, do on his own. (Unless otherwise indicated, masculine pronouns connote both masculine and feminine genders. That stylistic preference aside, it is an interesting sociological fact that the paralegal movement is composed very largely of women, and has been significantly influenced by the larger feminist movement.)

At this moment in history, a combined interest in both profitability and productivity is giving a new and highly significant impetus to the paralegal movement. Dissatisfied with achieving marginal improvements in law office efficiency, a few entrepreneurial visionaries are working to completely transform the practice of law from a cottage craft into a mass production service industry. Using a systems approach[6] and an array of adjunct resources — including, but not limited to paralegals[7] — the managers of these new "law clinics" and "group legal services" programs are actually seeking out the very thing which has long been the bane of public service practitioners — a very high volume of cases.

It would be naive to suggest that this new model of delivering legal services is free of difficulties. On the contrary, both the organized bar and the public are actively concerned about the potential for abuse in this new kind of legal services system,[8] and properly so: for all of Henry Ford's inventive genius, we have learned to our dismay that the production lines of Detroit can not only produce occasional lemons, but can also manufacture whole classes of automobiles which constitute, from design through assembly, a positive public menace.[9]

Nonetheless, for all the potential pitfalls, the potential benefits of the new service-delivery methods are extraordinary. First, by making legal services affordable and better publicized, the mass of American citizen-consumers can now have, for the first time in a long time, effective access to legal services (a presumed public good, though not without complications). Second, it has already been shown that it is possible to provide legal services in this manner and simultaneously maintain service quality — and even improve on it in some areas. And third, the technology being most rapidly developed in service to the private marketplace can be transferred to those legal services offices in the public sector where high caseloads and mass processing are, perforce, a necessary way of life.

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[4] There were 161 accredited law schools in August 1975 (telephone interview with staff of the Association of American Law Schools). The two lists of institutions offering paralegal training or education which appear in Appendix E show a net of 161 such facilities.

[5] *The Wall Street Journal*, Nov. 14, 1975, p. 34.

[6] See, for example, Strong and Ryan, *Liberating the Lawyer: The Utilization of Legal Assistants by Law Firms in the United States*, American Bar Association, Ill., 1971, especially pp. 43, 44.

[7] Stein and White, *op. cit.* footnote 1, pp. 12, 13. See, also, Christensen, *Lawyers for People of Moderate Means*, American Bar Foundation, Chicago, Ill., 1970.

[8] Analyzing the public interests involved in both the traditional and newer systems of delivering legal services has been widely explored in two hearings of a Subcommittee of the United States Senate. See "Paralegal Assistants," Hearing before the Subcommittee on Representation of Citizen Interests of the Committee of the Judiciary, July 23, 1974; and, "The Organized Bar: Self-Serving or Serving the Public?" (a hearing of the same Subcommittee), July 23, 1974, U.S. Government Printing Office, Washington, D.C.

[9] Nader, *Unsafe at Any Speed: Designed-in Dangers of the American Automobile*, Grossman, New York, 1965.

Here is where the intended readership of this manual comes in. Before describing the application of the paralegal concept, with its attendant ramifications, to the practical needs of public defenders and those rendering legal services to incarcerated offenders, it is important to describe some of the limitations put on that assignment.

1.2 Applying the Paralegal Concept to Public Defenders and Inmate Legal Services Programs: Some Lessons from Experience

This manual is an outgrowth of an earlier, exploratory study on the use of paralegals throughout the criminal justice system.[10] Some reflections on those earlier findings, focusing on difficulties in discovering appropriate roles for defender paralegals, are set out below. Following these are related observations based on more recent research on paralegals working in a correctional setting.

In civil practice, a technique has been developed[11] to methodically search for repetitive tasks which can be systematically delegated to paralegals. This approach leaves to the private lawyer an abbreviated, initial client interview and all of the legal counseling, judgmental decision-making, and formal representation. But the gathering of necessary factual information, and its transformation into pleadings, motions, interrogatories and so on, is delegated to a paralegal, under the supervision of an attorney and under the guidance of a carefully designed set of checklists, forms, and procedures (called a "legal system").

The merit of this inductive appoach in streamlining legal practice can be discerned by examining the file jackets of, say, 100 divorce cases, or probate proceedings, or residential real estate transactions, in a given jurisdiction. A strong impression emerges: A substantial part of the lawyer's practice in these fields is the production of documentary work products, much of which can be standardized and delegated to paralegals.

But examine 100 file jackets involving criminal cases, and one discovers that criminal practice doesn't follow the civil pattern. It does not consistently produce common types of documents; its primary aim is not the manufacture of legally significant words on paper. Instead, one must conclude that criminal defense practice contains a far higher proportion of *personal* services than does civil practice, and that difference will likely be reflected in the kinds of paralegals defenders use as against their colleagues in private law firms. (Incidentally, one reported byproduct of using defender paralegals is an increase in the paperwork in the attorneys' cases. That appears to result from the attorneys' new-found time to bore in on the *legal* work of their cases, and that often translates into a more active motions practice.)

Another tack in our methodical search for defender paralegals was suggested to us from a discovery recounted by a private lawyer, Lee Turner, who was the first Chairman of the American Bar Association (ABA) Special Committee on Legal Assistants. Mr. Turner's speciality is personal injury defense litigation, which is buttressed by a raft of forms, checklists, and procedures, and aided by a large staff of secretaries and paralegals (there being seven of these for every lawyer in his Kansas firm).[12]

In his travels, Mr. Turner came across a Virginia law firm bearing the delightful name of Allen, Allen, Allen and Allen[13] which also had a high ratio of paralegals to lawyers (5 to 1) and also specialized in personal injury cases, but on the plaintiff's side. Mr. Turner found that the forms, checklists, and procedures independently developed in the Allen firm were remarkably similar to his own, proving, he said, that logic leads different people to the same conclusion.

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[10] Stein, Hoff and White, *Paralegal Workers in Criminal Justice Agencies: An Exploratory Study*, Blackstone Associates, Inc., Washington, D.C., 1973. (A research report for the Law Enforcement Assistance Administration.)

[11] See, for example, various explanatory publications of the Utah Law Research Institute, University of Utah College of Law, Kline D. Strong, Director. The approach was also described in Stein, Hoff and White, *op cit.*, footnote 10 pp. 230-234.

[12] Stein and Hoff, *Paralegals and Administrative Assistants for Prosecutors*, Blackstone Associates, Inc., Washington, D.C., 1974, p. 5. (A report for the Law Enforcement Assistance Administration. The report is distributed at $3 a copy by the National District Attorneys Association, 211 East Chicago Avenue, Chicago, Ill. 60611.)

[13] For additional information on Allen, Allen, Allen and Allen see "Paralegal Assistants" *op. cit.*, footnote 7, pp. 82-96.

Thus we reasoned that the public defender's legal adversary — the public prosecutor — may have designed a number of paralegal innovations which could be applied equally well to defense practice. But in this we were disappointed: the District Attorney's office is by no means a mirror image of the Public Defender's, and the widespread and fertile use of paralegals in the prosecution of criminal cases often has no logical counterpart in defense work.[14] A major cause of this divergence is that prosecutor paralegals are frequently used to help process the DA's civil or quasi-civil caseload (consumer complaints, interfamily complaints, non-support cases, bad checks, and the like).

One should not conclude from these disappointing efforts to discover defender paralegal roles through an exercise of logic that criminal defense practice is inhospitable to the paralegal concept. Instead, it is safer to say that the effort taught us that the nature of the defender paralegal's work is likely to be quite different from that of his colleagues in civil practice or even prosecution. In keeping with Justice Holmes' observation, "Experience, not logic, is the life of the law," we have looked not to the paralegal movement in general, but to the actual application of the paralegal idea in a number of innovative public defender offices to obtain the raw material for this manual. The reader will judge for himself the value of our findings. It is our own impression that the paralegal movement has begun to adapt well to the peculiar needs of criminal defense practice, and that from its present base, it is certain to become a more common and sophisticated aspect of that specialty. A suggestion of things to come is provided by the Metropolitan Public Defender's Office in Portland, Oregon:

> Every two-person team of trial lawyers in the defender office has, in addition to secretarial support, one full-time investigator, one full-time aide working on sentencing plans, and two full-time 'Trial Assistants.'

In respect to the other area of concern in this manual — the provision of legal services to prison inmates — it must first of all be noted that the array of such services, and its implications for using paralegals, is mind-boggling. Virtually everything coming under the purview of a public defender, an appelate defender, a civil legal services program, and some others as well, is entailed in the full representation of clients who are serving time behind bars.

Second, formal programs to provide legal services to indigent prison inmates are almost all new. At present, it is by no means clear that these experiments will lead to a societal commitment to fund such legal services programs on a permanent basis.

Third, the two exceptions to this rule are the provision of counsel in certain appeals, which a defendant convicted at trial may bring as a matter of right in all states, and in parole revocation hearings, which the United States Supreme Court has decided are akin to criminal proceedings and thus subject to certain of the protections of the Fourteenth Amendment.[15] The Court has also sanctioned, if not fully required, paralegal assistance to inmates brought up on disciplinary charges.[16]

The latter sanction of legal assistance for inmates has helped to muster what is now a small paralegal army to serve as "substitute counsel" in scores of penal institutions around the country. Although this paralegal role is certainly covered in the text of this manual, we must report that there are considerable rumblings from attorneys in the prisoners' rights field about the efficacy of this mode of legal service. In order for inmates to obtain a greater measure of justice in these hearings (or at least win a few more of the close cases), a number of activists in the prisoners' rights field are pressing to have outsiders, unconnected with the correctional authorities, serve either as the hearing officers[17] or as an appeals body[18] in such cases. In the bargain, many of these advocates would be willing to relax some of the procedural safeguards now afforded inmates and would even contemplate waiving the prisoners' access to paralegal counsel. Moreover, at least some law students and inmates who have represented other inmates in disciplinary matters concur in the feeling that the substitute counsel's role is of marginal utility under present circumstances.[19]

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[14] Stein and Hoff, *op. cit.*, footnote 12.

[15] *Morrissey* v. *Brewer*, 408 U.S. 471 (1972); *Gagnon* v. *Scarpelli*, 411 U. S. 778 (1972).

[16] *Wolff* v. *McDonnell*, 418 U.S. 539 (1974).

[17] Communication with Richard Shapiro, Director, The Prisoners' Rights Project, Boston, Massachusetts.

[18] Communication with J. Michael Keating, Jr., Deputy Director, The Center for Correctional Justice, Washington, D.C.

In short, the paralegal's participation in almost every aspect of providing legal services to inmates is a very chancey proposition at the present time and that colors the nature of our recommendations in that sector of the manual.

1.3 The Objectives of This Prescriptive Package

This manual is designed to be a critical analysis of the current use of defender and corrections paralegals. We have invented neither the recommended paralegal roles nor the recommended methods of hiring, training, and supervising them; both are drawn from the experience of attorneys and paralegals we have observed and talked to. However, to make this archive of information comprehensible, we have sought to be selective and to synthesize much of what we have learned.

The purpose of this effort is to equip the leaders of defender offices and inmate legal services programs with useful information with which to implement the paralegal concept. Specificially, the objectives of the manual are as follows:

- *To tell administrators where successful projects are.* Our list of such projects is not very long, nor is it exhaustive. It may, in addition, be outdated in short order. But the educative value in getting a first-hand look and feel of an innovation such as this is so great that we have named all the pioneer projects we know of in hopes that this will encourage the interested reader in contacting them directly and even seeing them in action.
- *To steer administrators to other sources of information.* As this is written, defenders are starting a long overdue process of adapting modern management techniques to their needs. A number of these programs are occurring outside of any legal services project. Meanwhile, the list of relevant training materials and of training and educational institutions grows apace. In these and other areas, we have sought to amplify more fully the information contained in this manual.
- *To describe optimum paralegal roles in defender offices and corrections legal services programs.* For many readers, this is what this manual is all about. The fact that this is not our sole objective reflects our belief that deciding *what* jobs are to be given to paralegals is not the end of the administrator's responsibility, but rather the beginning.
- *To describe methods for hiring, training, and supervising paralegals.* We have sought to provide useful recommendations on these issues for the growing numbers of administrators who consider them important.

1.4 Ethical Considerations in Employing Paralegals

The lead opinion on the ethical constraints on using non-lawyer assistants is ABA Ethical Opinion 316 (January, 1967), which reads in part:

> A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners, non-lawyer draftsmen or non-lawyer researchers. In fact, he may employ non-lawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings as part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client. In other words, we do not limit the kind of assistants the lawyer can acquire in any way to persons who are admitted to the Bar, so long as the non-lawyers do not do things that lawyers may not do or do the things that lawyers only may do.

The point is that the proper use of paralegals is ethically sanctioned, but with it comes a professional responsibility on the lawyer for the acts of his agent — a responsibility that is also placed on lawyers by the application of common sense in managing their offices.

Applying this policy to specific situations will take some care on the part of both attorneys and paralegals. One of the former, employed by the Metropolitan Public Defender in Portland, Oregon, has developed a list of topics on which clients often want the paralegal's opinion and on advice. These are sentencing, chances of success or failure, preferences or peculiarities of judges, information in police reports, trial strategy, and plea negotiations.

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[19] Communication with Michael Wiggins, Esq., formerly on the staff of The Center for Correctional Justice, Washington, D.C. For a theoretical analysis of what elements of the due process safeguards are needed to produce justice in differing administrative situations, see Friendly, "Some Kind of Hearing," 123 *University of Pennsylvania Law Review* 1267 (1975). Note, however, that some experienced practioners (including Mr. Shapiro, footnote 17, above) would prefer to see paralegal representation re-instituted in disciplinary proceedings should these be conducted, as urged, by outsiders to the correctional system.

Beneath this legal concern is an attitudinal one. Although attorneys often counsel clients to take actions which they do not want to take, and sometimes are ethically barred from assisting clients in a proposed course of action, lawyers are nonetheless governed by a principled sense of fidelity to their clients' interests. This client orientation is the foundation on which a trusting professional relationship is constructed. And in no other area of practice is the need for such a relationship so crucial as in the representation of those accused or convicted of crime.

That attitude usually comes as second nature to lawyers, but this is not necessarily the case with their paralegals, who may be unclear as to what "fidelity to client interests" implies. Thus, attorneys should underscore the instruction they give their paralegals on legal ethics with encouragement to think of clients as their employer. Especially with lawyers who are inaccessible for much of the time, a paralegal who is available, courteous, and helpful actually strengthens the attorney/client relationship. Conversely, the paralegal whose behavior seems bureaucratic, indifferent, or disapproving is seriously undermining the client's regard for the legal service he is obtaining, and it matters little if the paralegal acted in strict conformity with the rules of ethics.

Clearly, the paralegal who wants to be responsive to clients, and in so doing offers opinions or advice of a legal nature, is doing both the client and the attorney a disservice. Our point is not that "client orientation" is all there is to the ethical question, but that both this attitudinal posture and the precepts of the Code of Professional Responsibility are vital concerns of the attorney who employs paralegals.

1.5 Defining "Paralegals"

"Paralegal" is a term of art without a settled definition. To those whose primary interest is in getting the work of the law office performed with greater efficiency and effectiveness, "paralegal" encompasses virtually any non-lawyer who is in a position to help the office, its lawyers, and their clients meet that objective.

This manual adopts that catholic definition except that for practical considerations, familiar, traditional roles — those of secretary, an investigator and a law student clerk — are excluded. However, it must be emphasized that many nonlawyers who are called by these long-familiar designations are nowadays often performing tasks not customarily associated with their job titles. For example, we have seen law students called "clerks" or "interns" performing tasks long associated with those roles, such as legal research and writing; we have seen others bearing the very same titles who are now performing paralegal jobs, such as helping attorneys prepare cases for trial. This evolving process helps to underscore that "paralegal" connotes responsible, untraditional *work* in a law office, not simply a class of new, untraditional *workers*.

This further suggests that the subject of this manual is really about new kinds of "jobs" nonlawyers can do for the defender or corrections legal services program — and not just about "roles" to be filled by new kinds of workers called paralegals. Indeed, some of the most creative offices applying the paralegal concept have no new staff whatsoever, but rather have re-tooled and up-graded the roles of secretaries, investigators, and law clerks.

One final comment on definition: some employers of paralegals make a distinction between their "paralegals" and their "law students," while others call only their law students "paralegals" and give no special designation to other lay staff who perform unusual tasks. This helps to highlight some special qualities which law students have as employees. Yet it also adds to the semantic confusion over what constitutes a paralegal. For the most part, the manual's use of the paralegal moniker ignores this distinction based on academic standing. Law student status, for our purposes, is never a prerequisite and is rarely a disqualifier for the jobs described in subsequent chapters.

1.6 The Organization of the Manual

In organizing the manual, we have separated the defender and corrections portions into two chapters. A discussion of paralegal assistance in criminal appeals and parole release hearings is to be found in the defender chapter, while all other legal services for inmates are covered in the corrections chapter.

Because criminal defense work entails a discrete, settled legal specialty, it lends itself to analysis by predictable, component parts ("case intake," "trial preparation," etc.). Further, we have found that within each component, the range of paralegal services to be found may be conveniently described according to a common format ("the paralegal's duties," "other sources of information", etc.). That describes the organization of Chapter Two.

Chapter Three, dealing with paralegal services for correctional inmates, covers a far broader body of criminal, civil, and administrative law, and describes a far less settled state of the paralegal art. Although we have sought to impose a logical classification scheme to this topic, this chapter is presented in a more narrative — or less didactic— manner.

1.7 Other Sources of Information

In addition to the various projects using paralegals which are mentioned elsewhere in this manual, there are several centers which provide studies, training, or technical assistance to organizations offering legal services to the poor (including criminal defendants and correctional inmates). As this is written, none of these centers is funded to provide assistance to such organizations specifically over the use of paralegals, or if so, their services are quite limited. Yet all are necessarily becoming knowledgeable on the theory and practice of using paralegals in the criminal justice system and may become increasingly available as resource centers for interested agencies. These centers include the following:

On Paralegals Generally

The American Bar Association
Standing Committee on Legal Assistants
1155 East 60th St.
Chicago, Illinois 60637
(312) 493-0533

Blackstone Institute
2309 Calvert St., N.W.
Washington, D.C. 20008
(202) 332-7125

The National Paralegal Institute
2000 P St., N.W.
Washington, D.C. 20036
(202) 872-0655

On Criminal Defense Services

National College of Criminal Defense Lawyers
and Public Defenders
1215 First National Life Building
Houston, Texas 77002
(713) 227-4141

National Legal Aid and Defender Association
1155 East 60th St.
Chicago, Illinois 60637
(312) 684-4000

National Legal Aid and Defender Association
National Center for Defense Management
2100 M St., N.W.
Washington, D.C. 20037
(202) 452-0620

On Inmate Legal Services

American Bar Association
Commission on Correctional Facilities and Services
1800 M St., N.W.
Washington, D.C. 20036
(202) 331-2200

Center for Correctional Justice
1616 H St., N.W.
Washington, D.C. 20006
(202) 628-6094

See also Appendix E for two lists of training and educational institutions with paralegal programs.

CHAPTER 2. DEFENDER PARALEGAL SERVICES FROM ARREST THROUGH APPEALS

2.1 Introduction

The paralegal jobs described in this chapter are set out according to the following format (with explanations of each heading given in parentheses):

Category of Paralegal Services by Stage of Proceeding

(E.g., "Case Intake," "Early Case Processing.")

Job description at each stage of processing:

(E.G., "Determination of Eligibility," "Arranging for Bail," etc. Note that there are as many as four such jobs under any one stage in the handling of a case.)

A. *Background.* (A brief explanation of where this kind of work fits into the defender's office.)

B. *The Paralegal's duties.* (Describing the major components of the job.)

C. *Potential for upgrading.* (Which indicates both additional responsibilities a paralegal can perform once he has mastered the basic skills and appropriate roles into which a paralegal may be promoted.)

D. *Special considerations.* (Which goes into any unique or ideosyncratic aspect of this job about which the public defender should be aware.)

E. *Other sources of information.* (Which indicates defender offices known to have paralegals performing this kind of work, plus other sources of useful information.)

2.2 Case Intake

2.21 Determination of Eligibility

A. *Background.* It is the responsibility of some public defender offices to screen everyone arrested and charged with a crime, in order to determine who is eligible for free representation by the defender or assigned private counsel. Typically, this screening process begins in the morning and is over by noon or shortly after.

B. *The Paralegal's duties:*

- To interview all defendants recently arrested, whether or not currently detained, to get from them required information as to income, employment status, number of dependents, and anything else which is taken into consideration in deciding eligibility.
- To verify, by telephone calls to family members or by other means, the accuracy of the information given by those who appear eligible for free representation.
- To certify in the name of the defender's office the eligibility of those who meet the standards of the jurisdiction.

C. *Potential for upgrading.* It is a natural progression to go from the administrative work entailed in this job to the more challenging job of helping clients get out on bail. (See paragraph 2.22) At the very least, the interviewer can simultaneously obtain needed information from apparently eligible clients both as to income eligibility and as to eligibility for release on their own recognizance.

D. *Special considerations.* This job is often regarded as ministerial, but the paralegal must be impressed with the idea that this fact gathering must be as accurate as possible, since the integrity of the office is at stake with every representation to the court as to a client's eligibility for free counsel. The work may therefore commend itself to a conscientious non-lawyer already on the staff, such as a secretary. Moreover, the supervisor should audit a sample of the paralegal's cases from time to time to insure that all clients who are eligible, but only such clients, are being properly certified. Similarly, an attorney should review the paralegal's worksheets on every defendant whom the paralegal has found to be ineligible before the negative certification is made to the court.

E. *Other sources of information:* Of the offices visited, only the following had the responsibility to perform this job.

The Alameda County Public Defender
Alameda County Courthouse
1225 Fallon Street
Oakland, California 94612
(415) 874-5353

NOTE: The Alameda Public Defender, James C. Hooley, has long been on record as a skeptic of the paralegal concept, notwithstanding the fact that clerks in his office perform some functions (like eligibility screening) which we have designated paralegal, and that law student interns perform other kinds of paralegal assignments in his office. His skepticism centers mainly on the dangers of delegating responsible legal work to untrained, unsupervised laymen. The avoidance of just such dangers, is of course, a significant goal of this manual.

2.22 Arranging for Bail

A. *Background.* The bail reform movement of the last decade has persistently asked the legally crucial question: Is a ransom demand for money the only or even the most effective guarantee that a criminal defendant will return to court for subsequent appearances? The answer is demonstrably in the negative, and in reaction to that finding, many jurisdictions have established pre-trial release agencies to obtain background information from each incarcerated defendant, verify its accuracy, and scientifically weigh its value in estimating the likelihood of each defendant's honoring a promise to return to court when called. But it can be argued that, whether or not a given jurisdiction has such an independent agency, every public defender should be prepared to make independent findings and recommendations regarding pre-trial release, at least in more difficult cases. Even where the "facts" about a given defendant are not in dispute (and often they are), a creative advocate can often find unconventional means of securing his client's release, such as the use of "third party custody" (supervised release). And given the important correlation between pre-trial release and more lenient dispositions, the defender may well have an ethical mandate to put serious time and effort on this aspect of his service. Clearly, those additional resources can and should be mostly paralegal. Note that, in many jurisdictions, the paralegal's morning is a frenetic one, for he may be working for a whole cellblock of defendants facing a late-morning or early-afternoon bail hearing.

B. *The Paralegal's duties:*

- To obtain from eligible clients all the information deemed relevant in the jurisdiction on the question of setting bail. In jurisdictions where a bail agency collects this information, the paralegal need only get a copy of the interview sheet, if possible, review it for accuracy with the client, and independently seek to verify that information by telephone calls to family, employers, etc., whenever that is appropriate (local experience will provide guidelines as to when this independent check is unnecessary, as when a defendant has obvious and long-standing ties to the community). Where no bail agency exists, the paralegal should on his own get the same kind of information, using a checklist adapted from jurisdictions having bail agencies, so that counsel may make reasoned arguments for no bail or low bail in the later hearing. (For such a checklist, see Appendix F.)
- To arrange for family members or others suggested by the client to appear at the bail hearing with cash, evidence of collateral, or a bondsman, in case money bail is set. Their appearance may also convince the judge of the authenticity of the defendant's community ties, thus obviating the need for bail.
- To arrange for representatives of narcotic or alcohol addiction treatment agencies in the community to interview appropriate clients and, if the client so desires, to appear in court to indicate their immediate eligibility for treatment if released.
- To arrange for ministers, employers, or representatives of community agencies to appear in court to offer to serve as "third party custodians" of those defendants who would otherwise be ineligible for release without bail.
- To follow up on those clients for whom bail was set and who remain incarcerated, to help the lawyer obtain a more favorable result in a rehearing. This may entail more investigation to verify the client's ties to the community, or work with family members to raise bail, or more efforts to locate an appropriate, willing third party custodian.
- To prepare relevant statements of facts for attorneys who believe a formal appeal of a bail decision is appropriate.

C. *Potential for upgrading.* Since the rewards of this work are often immediate, it can be a gratifying job for a paralegal who wants to stay with it for some time. Moreover, it is very much the kind of work which shows improvement over time, as personal contacts are extended and nurtured and the paralegal becomes a "regular" in the informal workings of the courthouse. Such evidence of improvement through experience should be recognized and rewarded by the office. Whenever possible, other avenues for upgrading the role should be pursued: having the paralegal actually prepare preliminary drafts of the legal papers needed to appeal an adverse bail ruling, having the paralegal meet with community service agencies which might be persuaded to become regular third party custodians, having the paralegal research the law on bail as background for challenging the local jurisdiction's practices—and so on—are all examples of how the paralegal can convert his day-to-day experience into methods of influencing practices and policies more generally. For ideas on promotion or rotation out of this specialty, see the "Defender/Corrections Aide Career Lattice" in Appendix C.

D. *Special considerations.* While the investigatory work of this job is rarely difficult, the quality and accuracy of the paralegal's findings must, if anything, be even more reliable than those used to determine eligibility for service. (Note that both investigations may be triggered by a common interview and may, in fact, be subsequently conducted by the same paralegal.) It is the adversarial nature of the bail paralegal's job which presents the challenge and the danger: challenge because he can give vital support to an attorney's occasional, successful challenge to the bail agency, prosecutor or judge, and danger in that an overly-zealous paralegal can shave the facts as he knows them. Thus, the attorney using the paralegal as an aide in this fashion should not merely review the paralegal's notes, but routinely confer with him and probe for problem areas in each case before presenting his bail recommendations in court.

E. *Other sources of information:* Defender agencies which have used paralegals in this way include:

The Public Defender Service for the
District of Columbia
601 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 628-1200

Metropolitan Public Defender
514 Southwest Sixth Avenue, 5th Floor
Portland, Oregon 97204
(503) 225-9100

The job described under paragraph 2.34, Liaison with Detained Defendants, has paralegals helping jailed inmates make bail or otherwise obtain pre-trial release:

Legal Aid Society of New York
Criminal Defense Division
10th Floor
15 Park Row
New York, New York 10038
(212) 374-1737

The "technology" of operating a bail agency parallels the work contemplated in this paralegal's job. For information about the former contact:

Bruce D. Beaudin, President
National Association of Pre-Trial Services
Agencies
c/o District of Columbia Bail Agency
601 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 727-2911

2.3 Early Case Processing

2.31 Diversion

A. *Background.* Just as with pre-trial release, many communities now have pre-trial intervention—or "diversion"—agencies which screen people who have been (or could be) charged with a crime, select out those who meet certain criteria (e.g., are addicts in need of treatment or individuals with no prior criminal record), and recommend that, for these, prosecution be waived for a set period of time during which the defendants volunteer to follow a plan of treatment or, at least, demonstrate law-abiding behavior.. Because this process of "diverting" defendants out of the system normally depends on prosecutorial discretion over whether to file charges, there need be no formal administrative structure—no "diversion agency"—supporting it. Indeed, many prosecutors have long practiced diversion through an informal system of "desk-drawer probation," even though this system lacks the monitoring and counseling capabilities which diversion agencies provide. In either case, the public defender's office need not be a passive actor in the process: however "strict" the diversion agency's or the prosecutor's eligibility criteria, there is likely to be a grey area where the decision could go either way and where effective representation may win a client's release through diversion. And it bears emphasizing that, from the client's perspective, a diversion achieved through paralegal efforts may be every bit as valuable as an acquittal won through brilliant legal advocacy.

B. *The Paralegal's duties:*

- To screen all new cases so as to identify those which are arguably eligible for diversion. Note that this requires an administrative capacity to funnel all new cases through a single checkpoint in the office, as well as a capacity to have all the relevant information on each defendant, such as his "rap sheet," his arrest report, and his admission to being an addict, early in the processing. Absent these conditions, the individual lawyers in the office will have to identify the potentially eligible clients as soon as they obtain the supporting evidence—a system far more prone to slippage (more on this in section "D".)
- To inform his supervising attorney of clients potentially eligible for diversion and to perform follow-up investigations as instructed.

C. *Potential for upgrading.* There are two obvious ways in which this paralegal job can be upgraded. First the paralegal can help the office take the initiative in liberalizing the criteria used in diversion cases and in expanding the network of community resources willing to work with people in a diversion status. The other opportunity is for the paralegal, serving as his supervisor's agent, to negotiate directly with the diversion agency or prosecutorial staff over the selection of clients for diversion. Clearly, this is a sensitive responsibility. Yet the range of issues is sufficiently narrow that any paralegal having considerable experience in this field and an appropriate, mature temperament is likely to be a better negotiator in such cases than many lawyers who have no particular background in this field. Still, the Public Defender should assure himself that the paralegal has these requisite qualities—and is so perceived by his counterpart in the prosecutor's office—before he is allowed to undertake direct diversion negotiation.

D. *Special considerations.* The ultimate decision to divert defendants usually lies with the prosecutor (a decision which sometimes requires the concurrence of the court; a few diversion projects are actually conducted by the judicial branch, a variation not addressed in the following discussion). Obviously, in the normal situation, in the absence of authorizing legislation or court rule, the whole diversion concept is dependent on the prosecutor's attitude, which may be manifested in the following ways: he may entertain no recommendations of this nature or only those emanating from his staff or that of an independent diversion agency; alternatively, he may wish to shift the burden of screening his caseload for eligible defendants over to the public defender and place the whole process into something akin to an adversarial one; or, as is implicit in the job described previously, he may welcome a mixed system, a substantial portion of which is operated by a diversion agency staff, but one that also allows for defender scrutiny to insure that the system is operating even-handedly. Even with prosecutorial agreement to hear arguments from the defender staff on individual cases, instituting that agreement should be done on an experimental basis; a paralegal performing the job suggested in this section who only has miniscule number of successes to his credit after six months or a year probably constitutes an ineffective use of resources.

Probably the success or failure of this job depends on the administrative capacity of the defender office to test the circumstances of every new case against the locality's diversion criteria. This requires uniformity and universality in the screening process—which in turn probably necessitates a centralized review mechanism over all the attorney's new cases. Such a system may well be resisted in offices which have purposefully decentralized the handling of all their cases.

A final consideration: diversion necessarily involves a waiver of the defendant's right to a trial on the charges. Before any choice is made to accept an offer of diversion, the paralegal should insure that the client and his attorney have examined the case with some care so that diversion is not used as a replacement for a probable acquittal or dismissal.

E. *Other sources of information*:

Legal Aid Society of New York
Criminal Defense Division
10th Floor
15 Park Row
New York, New York 10038
(212) 577-3355

For information on separate agencies or subagencies administering diversion programs, contact:

American Bar Association
National Pretrial Intervention

Service Center
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2255

See also Jacobson and Marshall, "Defender Operated Diversion—Meeting Requirements of the Defense Function," *NLADA Briefcase* Vol. 1, No. 23, June 1975.

2.32 Initial Client Interview

A. *Background.* It is standard practice in "group legal services" programs, in "legal clinics" and in many "neighborhood legal services" programs for a paralegal to conduct all of the initial client interviews, in much the same way that medical technicians often run a battery of tests on patients undergoing a checkup even before they meet with their physician. That delegation of service to a non-professional in a defender office is most easily adapted to an office using a "zone defense" system—that is, one in which different teams of attorneys handle the office responsibilities at each stage of the proceeding. Conversely, it may be most strongly resisted in offices providing "man-to-man" defense services, with a single attorney responsible for everything in a case from intake through notice of appeal. In such offices, the ethos of the system is that a close, sustained attorney-client relationship with a client is an essential part of the provision of effective representation, and that the initial client interview is a crucial ingredient in establishing that relationship. Interestingly, the one office (in Portland) using paralegals for such interviews employs a man-to-man system. It seems to answer critics of this practice in the following way: the client is best (and more thoroughly) served if he is represented by a *team* of workers, headed by an attorney; assuming the paralegal assistant is competent, his initial interview and subsequent contacts with the client enhances rather than weakens that client-team relationship; and even if delegating the initial interview to a paralegal is not the ideal, its demerits are more than outweighed by the advantages in having each case prepared far more quickly and thoroughly under this system. Note that under the Portland system, it is the attorney who customarily first meets the client, however briefly, and introduces him to the paralegal or informs him that a paralegal will be interviewing him shortly. Moreover, the office policy in Portland requires the attorney himself to interview in depth each new client within 24 hours after the arraignment.

B. *The Paralegal's duties:*

- To interview newly assigned clients so as to obtain all relevant information necessary or useful for preparing a defense. A questionnaire is essential for this purpose, not only to remind the interviewer of points to be covered, but also to record the answers in a standard format so that they can be easily retrieved later on. Such an interview form appears in Appendix F.
- To inform, or re-inform, the client of his rights, his need to be completely cooperative with his defense team, and the legal steps that will follow. It is helpful for the paralegal to give the client a professional card with both the attorney's and the paralegal's names on it.
- To offer to be of assistance with whatever family or similar problems the client may have and to indicate other ways in which his defense team can help with his non-legal problems.
- To collect whatever formal papers and reports as are immediately available and assemble these and the interview form in a new case jacket.
- To undertake follow-up assignments, such as obtaining "rap sheets" of witnesses, medical reports, requesting an investigation and a community treatment plan, and so on. Note that in using the prototype legal system in Appendix F (Opening New Case Files), the paralegal works with a secretary to have key information transcribed from the interview sheet to a typed, multi-part form. Pages from the latter are used to request investigations and other follow-up actions.

C. *Potential for upgrading.* This is a highly responsible job for a paralegal. The principal opportunity for expanding the job is in having the paralegal follow each new case in the role of a "Trial Preparation" assistant to the attorney (see paragraph 2.42), or to do legal research or to draft routine motions.

D. *Special considerations.* Permitting paralegals to conduct an initial client interview is questionable in the minds of some attorneys. It can be argued that allowing untrained attorneys to do it is not much better, so important is the first interview and so inhospitable is its customary setting, the local lockup. One should not conclude from this that paralegals cannot undertake important and sensitive assignments such as this. But an extra measure of forethought, training, and supervision is very much advised for this job. The following training materials recommended should prove helpful to this end.

The Portland "team" on which this prototype paralegal serves also includes, in addition to the attorney, a half-time investigator and a half-time community services planner. The latter team member (generically described in the next section) makes it possible for the client interviewer to not only question the client about his family and social problems (item 3 in the job description), but to also insure that the team can affirmatively respond to the problems uncovered.

E. *Other sources of information:*
Metropolitan Public Defender
514 Southwest Sixth Avenue, 5th Floor
Portland, Oregon 97204
(503) 225-9100
See also:

Statsky, William P.
Legal Interviewing for Paralegals
The National Paralegal Institute (1973)
2000 P Street, N.W.
Washington, D.C. 20036
(202) 872-0655

Statsky, William P.
Introduction to Paralegalism
Chapter 9 ("Legal Interviewing");
West Publishing Co., (1974)

2.33 Planning Community Services for Clients

A. *Background.* Washington, D. C.'s Legal Aid Agency and its successor organization, the Public Defender Service, was a pioneer in putting social workers to work in tandem with criminal defense lawyers. Its Offender Rehabilitation Division (ORD) puts primary emphasis on marshalling community services for accused felons while they are on personal or money bond awaiting trial. The premise is that should they be convicted or plead guilty, evidence that they have successfully held a job, or undertaken treatment for narcotics addiction, or the like, constitutes a powerful argument for imposing a suspended or probationary sentence. Similarly, the professional and paraprofessional social work staff attempts to line up similar community services for those defendants who have been detained before trial, have been convicted of more serious offenses, and are now awaiting sentencing. In this situation, the ORD-developed sentencing plan is more likely to be at variance with the one recommended by the corrections staff and stands less chance of being adopted by the court. Obviously, many clients served by ORD are subsequently freed without conviction, thus obviating the need for ORD services as a matter of defense strategy. But it is often too late to be of effective service after the issue of guilt or innocence has been determined in a given case. And the hope is that, even for those who are later freed from prosecution or conviction, the community treatment planning has been anything but an exercise in cosmetics. On the contrary, the service is designed to help meet the real needs of each client—and thus will help him avoid future brushes with the law. Although this underscores the benevolent "social work" character of the job, its very concrete benefits to lawyers and clients from a purely "legal" perspective makes it apt to call such workers "paralegals."

Just as with diversion, the defender office should make sure that any such use of "treatment" services has the client's approval and that its inconvenience is justified in helping with the client's legal problems. If the latter is not the case, social service referrals should be made only if clients truly volunteer for them.

B. *The Paralegal's duties:*

- To screen every new case coming into the office and select those for which a plan of obtaining services in the community may prove helpful to a certain class of client: those who, if convicted, would find it difficult but not impossible to obtain a community-based sentence. Note that in Washington the ORD Director performs this screening, while in Portland, the "Trial Assistants" do it, applying a criterion of "why *not* to refer the case to the Alternatives Worker?" in close cases.
- To interview the client and, when appropriate, his attorney, family, etc., and then set out the components of a treatment plan based on this diagnosis.
- To obtain commitments from social and health services agencies and employers in the community to provide placements in accordance with the treatment plan. Often a single such placement is sufficient (e.g., a job). But frequently two or more are needed for a given client (e.g., placement in a job training program and in a community mental health agency). To a greater or lesser extent, the

paralegal's diagnosis and plan are dictated by what services are actually available in the community.

- To monitor the progress of each such client during the pre-trial period, and make adjustments as needed, so as to make the best possible record for a sentencing disposition should the case come to that stage.
- To make similar plans and obtain similar placements, albeit on a contingent basis, for appropriate clients who have been incarcerated pre-trial and who cannot make bail. When a community treatment plan is set up, the paralegal works with the lawyer in seeking a review of the client's bail status before trial. Otherwise, the plan is kept in reserve for use in a sentencing hearing should there be one.
- To make contact with the person (usually a probation officer) appointed by the court to make an independent background report relevant to sentencing, and to provide as much useful and influential information to this worker as is possible.

C. *Opportunities for upgrading.* This is very similar to the work of the paralegal in the bail area. Indeed, in respect to clients who cannot make bail, the search for a third-party custodian and the formulation of needed community services are two sides of the same coin. Also, like the bail paralegal, the community services planner should be expected to grow in knowledge and effectiveness over time and should be appropriately rewarded. These skills, which improve with experience, include an ability to help clients better identify their social and economic needs, and to insure that these are truly met—by making multiple placements for a given client, by finding new providers of services, and so on.

D. *Special considerations.* Although this paralegal rarely is called on to provide much direct counseling services himself, he is expected to analyze each client's needs, to work closely with community services agencies in making placements and in following up on the client's progress in those placements. Thus, a social work background for at least some of these paralegals is an asset. The Seattle Public Defender's Office has also found certain ex-offenders to be especially effective in this role.

Wherever we observed this kind of paralegal role in operation, the paralegals invariably stressed the critical importance of the process by which clients are referred to them. Most defender offices having this kind of worker rely on the attorneys to decide which cases are to be referred, and when. In the paralegal's judgment, many such attorneys are usually less than acute social service diagnosticians. Often, in fact, attorneys with the greatest "social work" concern for clients are the most reluctant to share those concerns with others. Consistently, we heard that the referrals were too few in number, were often inappropriate, and were often ill-timed. Projects which had social service paralegals reviewing all incoming cases, or established close and continuing attorney-paralegal relationships, abated these sources of frustration entirely. One or both of these methods of involving the paralegals in the screening and referral process is strongly recommended for two reasons: the paralegals will perform much more beneficial work, for more clients; and the basic mandate of the job—to achieve extremely difficult objectives—will be far easier to tolerate.

It should be pointed out that a well-conceived presentence report may fail to be influential in the sentencing decision, but may have a good effect in a motion for bail pending appeal, or a motion to reduce the sentence, or even in a later parole release hearing. Ideally, then, paralegals preparing a community services plan should remain available to be of help at these later stages of the process.

E. *Other sources of information:*

The Public Defender Service for the District of Columbia.
Offender Rehabilitation Division
601 Indiana Ave., N.W.
Washngton, D. C. 20004
(202) 628-1200

The Metropolitan Public Defender
"Alternatives to Incarceration" Program
514 S.W. Sixth Avenue
Fifth Floor
Portland, Oregon 97204
(503) 225-9100

Seattle-King County Public Defender Association
"Pre-Sentence Unit"
202 Smith Tower
Seattle, Washington 98104
(206) MA2-4815

The Massachusetts Defender's Committee
120 Boylston Street
Boston, Massachusetts 02116
(617) 482-6212

Legal Aid Society of New York
Criminal Defense Division
10th Floor
15 Park Row
New York, New York 10038
(212) 374-1737

The following program uses a highly integrated social worker-lawyer team in service to clients, which includes but goes beyond the kinds of services indicated in the discussion above.

The Woodlawn Criminal Defense Services
950 E. 61st Street
2nd Floor
Chicago, Illinois 60637
(312) 643-6000

See also: *Rehabilitative Planning Services for the Criminal Defense*, An Evaluation of the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia; National Institute of Law Enforcement and Criminal Justice (LEAA), (1970). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Price $1).

2.34 Liaison with Detained Defendants

A. *Background*. New York City's population of jailed defendants awaiting trial is considerably larger than several states' total population of men and women behind bars—pre-trial and post-conviction combined. This crush of volume in New York resulted in thousands of clients feeling lost and out-of-touch with their Legal Aid lawyers. To help bridge that communications gap, the Legal Aid Society placed a group of "Prison Legal Assistants" who make daily visits to jails around the city. That experience has uncovered a number of beneficial services which paralegals can perform for any incarcerated client of any criminal defense lawyer.

B. *The Paralegal's duties:*

- To periodically visit the locality's detention centers and meet with clients of the defender office.
- To immediately report to the appropriate attorney any emergency situation confronting incarcerated clients.
- To otherwise serve as a go-between for such clients and their attorneys and to perform follow-up assignments given by the attorney.
- To perform similar services in respect to the client's family, his non-legal problems, and so on.
- To assist appropriate clients to get released on bail, or in the custody of a third party, or by other means.

C. *Potential for upgrading*. The two areas where an experienced paralegal in this role can take on relevant, increased responsibilities are, first, as a trial preparation assistant in respect to incarcerated clients' cases, and, second, in the broad area of corrections legal services, certain portions of which fall within the jurisdiction of many public defenders. As is suggested below, the unique circumstances of this job are likely to make it evolve from that of a "soft" service to one that produces many hard, tangible benefits for clients.

D. *Special considerations*. The operation of every jail invites ongoing scrutiny by its inmates' attorneys. The New York experience seems to show that, by immersing a set of paralegals in the workings of the city's houses of detention, individual problems were uncovered that fell into larger patterns, each of which mandated remedial efforts from the paralegals. Thus, they have helped to arrange hundreds of administrative transfers of inmates to drug treatment programs, hospitals, and psychiatric facilities. They have spotted hundreds of legally deficient warrants, cases of lost custody papers, or, in the case of sentenced misdemeanants, cases of wrongly computed time served, all of which led to clients' release. They have assisted in hundreds of cases in getting bail reduced and have helped to establish and administer five revolving bail funds. The point is that, even though this paralegal service is first of all a communications device—informing clients of the status of their cases is the most common, psychologically beneficial service—it is likely to also become something of a specialized inmate legal service program as well and is equally likely to impact on the defender office's efforts to influence bail decisions. These circumstances suggest that an experienced and knowledgeable paralegal be the initial person assigned to this job; it takes a certain amount of initiative and perception to discover the full dimensions of this role in any given jurisdiction. Thereafter, such a paralegal may work well as a supervisor of others who may lack his paralegal experience but who show an affinity and an enthusiasm for this kind of work.

E. *Other sources of information:*
Legal Aid Society of New York
Criminal Defense Division

10th Floor
15 Park Row
New York, New York 10038
(212) 374-1737

Santa Clara County Public Defender's Office
111 N. Market St., 5th Floor
San Jose, California 95113
(408) 299-3221

Note: The following maintains continuous contact with jailed clients because local detention authorities permit such clients to telephone their attorneys—or their Trial Assistants—any weekday morning:

The Metropolitan Public Defender
514 Southwest Sixth Avenue, 5th Floor
Portland, Oregon 97204
(503) 225-9100

2.4 Trial Preparation

2.41 A Word about Secretaries and Investigators

The paralegal services described in the following are composed of one job entailing field work and another involving a series of office tasks. The former may be thought of as the work of an "Investigator Aide," while the latter might be described as that of "Advanced Legal Secretary" or an "Administrative Assistant." What is implied in these titles is that the jobs of this section need not be new roles grafted onto the office structure, but may rather be designed as extensions, both up and down, of the current staff's investigative and secretarial career ladders.

In respect to the use (or misuse) of secretaries in this connection, we once came across a three-man team of felony trial prosecutors, one of whom perceived in their secretary a level of imagination and talent that permitted him to delegate more and more trial preparation work to her. Using only her wits and her telephone, she developed effective techniques for tracking down elusive witnesses and handled the calls of others in a manner that kept them pleased and cooperative. On her own, she made sure that the attorney's case files were complete and scheduled all of his pre-trial conferences with police and civilian witnesses. When the police officers came for such conferences, they almost always had with them all their investigative notes and reports, much to the envy of other prosecutors who had difficulty persuading officers to bring such materials. However, this secretary's role as a part-time paralegal came to an end when that one attorney was promoted out of the team. Perhaps the only thing that kept her from leaving that DA's office altogether was the fact that she was herself promoted to be the secretary of the division chief, certainly a more prestigious job but no less a waste of her paralegal talents. It should be mentioned that the personnel system in this office, like most others, did not contemplate the promotion of secretaries into the paralegal ranks or even into a role which might be called that of an "Advanced Legal Secretary," (i.e., a paralegal who also types).

Regarding investigators (another role outside the scope of this manual), it is worth noting the hypothesis of some trial lawyers that most attorneys in publicly supported law offices have an insufficient appreciation of the potential value of a good investigator. For example, Professor Gary Bellow, Director of Harvard Law School's clinical programs, has long maintained that most legal services lawyers and public defenders have not sought, because they do not really know about, the quality of investigative assistance to be found in many homicide detectives and insurance claims adjustors, to cite two examples. The first of these has long been an elite speciality in law enforcement, and many homicide detectives enjoy excellent reputations for their imaginative investigation work, their thoroughness, and their sophisticated understanding of scientific investigative technology. A distinguishing feature of the more competent claims adjustors is that, once the "facts" are uncovered and the decision to press the legal claim is made, the investigators are able to put the case together in its best possible posture for the adversarial proceedings to follow. In both of these examples, "trial preparation" is not the work of a separate lawyer's assistant, but is an integral part of the investigator's job. This is not to suggest that most investigators working for most public defenders are not competent, but merely to indicate that few have become as heavily involved in the preparation of cases for trials as have some of their counterparts in other kinds of agencies.

Having said that it must be recognized that public defenders' funding agencies may prove far more receptive to adding on new paralegals for field work and in-office assignments than in adding to, and expanding the levels of, the investigative and secretarial ranks. In this situation, the "jobs" suggested are best conceived of as "roles" for a new paralegal staff. On the other hand, some offices may find it easier to expand the size of the existing support staff, and with it, the amount and range of delegated work. In either case, it is well to remember that, unlike most of the jobs in the previous section which increase the reach of the defender office's services, here we are discussing ways of reassembling the basics of the defense counsel's job. That will impact on the way the lawyer does his work, and it will also affect the investigator and secretary.

2.42 Fieldwork Assistance

A. *Background.* The "Attorney Aide" program in Washington, D.C.'s Public Defender Service, on which this job is modeled, had two aspects which deserve mention.[20] First, it involved every prosaic fieldwork task which the attorneys needed to be done, such as the retrieval of information from court records. And second, it took advantage of the special insights of the Aides, most of whom were ex-offenders. In the latter capacity, the Aides were often able to track down witnesses whom the law student investigators simply couldn't find. But the value of the Aides' "street savvy" went further, as in the case of one client who was arrested with a large quantity of cocaine, which the prosecutors believed was for purposes of re-sale. After some inquiries, an Aide told the defendant's lawyer that the DA's theory was wrong; that the defendant was a long-time cocaine user with a reputation within his community for anti-social behavior, such that other drug users would never buy from him. That insight materially affected the disposition of the case. Incidentally, it should be noted that staff turnover was a continuing problem in the Attorney Aide program, but the problem was most severe in respect to those Aides who were clearly over-qualified, that is, held college degrees.

B. *The Paralegal's duties:*

- To obtain information from court and other records. This may entail tracking down a court jacket (often a not-inconsiderable task), finding needed information (such as the name of a codefendant's attorney), or getting a certified copy of a document (e.g., an affadavit in support of a search warrant). Hospital, police and meteorological records are other examples.
- To provide transportation and delivery services, such as picking up witnesses.
- To serve subpoenas in emergency circumstances, when it is too late to use the jurisdiction's regular service.
- To track down elusive witnesses. Normally, this does not entail a full investigatory interview, which is instead conducted by the attorney or the investigator.
- To provide other, lower-level investigatory services, such as having the value of allegedly stolen articles appraised, or having photographs taken of a crime scene, or checking on a defendant's outstanding charges in another jurisdiction.

C. *Potential for upgrading.* This work calls for fewer advanced skills than do the other jobs described in this chapter and that poses a quandry. Job holders who are competent to do this work may not appear to have talents for more responsible assignments. Yet if the job is viewed as both low-level and dead-end, it is likely to engendor poor morale, unsatisfactory performance, and high turnover. The administrator who is anxious to see that these tasks get done — and to cease having his lawyers do them — should seek to build career mobility into the job and to be creative in finding, nurturing, and rewarding the talents of staff doing this work. Thus, the paralegal who is particularly effective in dealing with clients may work well as a communications link with detained clients. Or the paralegal who shows imagination in lower-level investigations may move up that career ladder. In both of these examples, it may be useful to make the promotion to that of an "Assistant Detention Center Paralegal" or an "Assistant Investigator" (or an "Assistant Community Services Coordinator", etc.); although the paralegal may have excellent skills in face-to-face communication, he may well have poor writing skills and other deficiencies that need improvement before advancing into the "regular" paralegal role.

D. *Special considerations.* This job can be perceived as a "New Careers" position, that is, one well-suited for workers from disadvantaged backgrounds who aspire to an upwardly mobile career in the "human services." Experienced public defender attorneys have a considerable grasp of the disabilities often associated with such people, at least those who have repeatedly gotten in trouble with the law. Yet the same attorneys can all recite exceptions to that pattern — former clients who, for all their problems, apparently had the talent and the desire to shed their past disabilities, and lacked only the opportunity to find legitimate, career-oriented employment. This position can be designed to provide such an opportunity. Although it is probably not practical for a defender agency to operate a full-blown "New Careers" manpower program itself, the defender office can see to it that other agencies provide the supportive services normally associated with such manpower projects to help the trainees become productive workers. Alternatively, the office can seek out recruits who are from very disadvantaged circumstances, but who show high promise of succeeding without supportive services. Examples of the former might include the locality's manpower training agency or its community college, which may be able both to locate appropriate candidates and to provide them considerable training, education, and other services on a part-time basis. Alternatively, the office can follow the example of the Seattle Public Defender, which sought a mix of college graduates and ex-offenders in its "Presentence Unit," recruited extensively, and after careful screening, selected only the most promising candidates (there being more than ten applicants for each opening). We do not mean to recommend college graduates for this "Fieldwork Assistance" job, but the Seattle example of extensively recruiting for candidates with lesser educational attainments may be worth repeating.

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[20] See Stein, Hoff and White, *op. cit.*, footnote 10, pp. 133-165, 244-291.

E. *Other sources of information:*

The Public Defender Service for The District of Columbia
601 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 628-1200

See Also:

Riessman, Frank and Pearl, Arthur. *New Careers for the Poor*. The Free Press of Glencoe (1965).

2.43 Preparing for Trial or Plea Negotiations

A. *Background.* The most remarkable contrast between defender offices and all other kinds of legal service programs, ranging from prosecutors' offices to private law firms, is that one finds paralegals working closely with attorneys to prepare their cases for litigation or settlement in every known setting *except* public defender offices. Or that was our finding until we came across the Metropolitan Public Defender (MPD) in Portland, Oregon. In fact, one would not have found "Trial Assistants" there had not the skeptical Public Defender given in to a community college professor anxious to place two paralegal students in the Defender's office. Building on that, the MPD obtained four additional Trial Assistants through the Jesuit Volunteer Corps (similar to VISTA), which, combined with college student employees, gave the office a ratio of one Trial Assistant for every two lawyers for a period of a year. Recently, the Defender office received funding to convert the four volunteer slots into paid staff positions. With a new cadre of Jesuit volunteers and their predecessors (now on the regular staff), the office now has one paralegal Trial Assistant for every trial attorney. Clearly, the idea has its converts in the one office that has tried it out. Note that the Portland Trial Assistants perform several of the jobs previously described in the section on "Early Case Processing"; here we focus solely on their services in polishing the case for trial, dismissal, or plea negotiations.

B. *The Paralegal's duties:*

- To make sure that every necessary document and report ordered for each case gets into the case file (rap sheets, meteorological reports, etc.). This and the next two tasks are by way of follow-through on action initiated earlier, under "Early Case Processing." (paragraph 2.3.)
- To coordinate the investigators' work and to keep the attorney informed on its progress. The paralegal participates in thinking through investigative strategy, identifying investigative leads, etc.
- To serve as liaison with paralegals (the "Alternatives Workers") helping clients to obtain community services.
- To maintain weekly contact with clients, and to answer all calls for the attorney in his absence, fielding those which are within his competence and otherwise forwarding questions and messages to the attorney.
- To help organize the attorney's calendar, making appropriate arrangements with the court docket clerk, scheduling client and witness interviews, maintaining a tickler system, etc.
- To provide the attorney continuous reports and recommendations — including ideas on trial strategy — and to get instruction on new assignments.

- To take notes at the voir dire and provide assistance as needed at trial.

C. *Opportunities for upgrading.* This is the top of the paralegal ladder. It is most suitable for paralegals who have the ability to succeed in law school, which will indeed lure many such paralegals away.

D. *Special considerations.* To realize the potential for this role — to truly become the attorney's alter ego — requires considerable training and as much as six or eight months on-the-job experience. To protect that investment, it is desirable to have a salary structure that offers inducements for such paralegals to stay on for, say, two or three years. However comfortable and confident the attorney-paralegal relationships grows, it is essential to keep the professional distinction in sharp focus: the paralegal must always identify himself as someone who is not a lawyer, and he must never give advisory answers to clients' legal questions. (See paragraph 1.4 on Ethical Considerations in Employing Paralegals in Chapter 1.)

E. *Other Sources of information:*
The Metropolitan Public Defender
514 Southwest Sixth Avenue
Fifth Floor
Portland, Oregon 97204
(503) 225-9100

See also the portions of the MPD's "Trial Assistants' Manual" in Appendix A.

2.5 Sentencing

2.51 On Preparing Sentencing Recommendations

The general public may perceive the criminal-defense lawyer's responsibility as primarily one of winning a dismissal or an acquittal for his clients; the criminal defense lawyer who holds that view is perhaps short-sighted. His responsibility for many, probably most, of his clients against whom there is strong evidence of guilt, is to get for them the best disposition possible — which is a euphemism for pleading guilty to the least severe charge possible under the circumstances. No wonder that effective plea bargaining is a specialized craft of the defense lawyer with a long and generally reputable history.

But nowadays the "best possible disposition" is also considered to encompass effective advocacy in the sentencing hearing. Indeed, one reason that the imposition of sentence is less frequently made immediately after a plea or a verdict of guilt is entered is that defense counsel are asking for a separate hearing on that subject, for which they want time to prepare their recommendations to the court. Even where the practice of a separate sentencing hearing has come about because statutes or court rules require the preparation of a "presentence report" from independent staff, many defense lawyers are using this time period to prepare their own well-reasoned sentencing recommendations.

The cumulative experience of lawyer-paralegal teams working on sentencing recommendations suggests that the most persuasive case to put before the sentencing judge is a record of the offender's crime-free, constructive behavior in the community during the months between release on bail (or personal recognizance).and the sentencing hearing itself. Moreover, if that record followed a pre-conceived plan of "rehabiliation", and therefore contained elements of drug treatment, or steady, lawful employment, or regular counseling sessions with a social service worker, or whatever it was that a paralegal and the defendant has worked out, the case for continuing with that plan under a suspended or probationary sentence is all the more compelling.

Thus it is that the paralegals working to set up such plans are employed in defender units with names such as the "Offender Rehabilitation Division" (in Washington), a descriptive label which defies the logic of the criminal law, since the bulk of its work is done pre-trial, when it is in theory inappropriate to attach either "offender" or "rehabilitation" labels on services given to presumptively innocent citizens.

If the offender's presentence constructive behavior in the free community is the strongest argument for a suspended or probationary sentence, clearly the defense counsel's burden in arguing for a similar sentence for a client who has been jailed up to the sentencing hearing is difficult. Not only is there an absence of recent evidence that the offender is capable of functioning responsibly in the free community, there is the also damaging evidence which led to the offender's detention in the first place: a relatively serious crime, or a relatively serious record of repeated crimes, or a relatively scant connection with the local community. The first two of these are precisely the reasons most often advanced for sentencing convicted offenders to prison.

From all this, we conclude that effective representation at sentencing is inexorably tied to getting the client released pre-trial (paragraph 2.22) and into appropriate community services (paragraph 2.33). As a fallback, paralegal assistance for pre-trial detainees can sometimes lead to a sentence involving community treatment if the paralegal has sufficient lead time to line up resources at the ready, should the client be given a community-based sentence. Needless to say, it is usually difficult to obtain such offers of help from community agencies when there is no assurance that the judge will go along with the plan.

The last refuge is to seek to piece together a plan subsequent to the client's conviction or plea. In our survey, both New York's Legal Aid Society and the Seattle Public Defender have paralegals performing that service. All of the New York clients have felony convictions facing them, and 70 percent of them are spending the six weeks between conviction and sentencing in jail. Yet 40 percent end up with a probationary sentence, which suggests that, however late the paralegal's involvement, their task is by no means hopeless. Similarly, in Seattle, the "Presentence" paralegals generally have a four or five week period in which to develop a sentencing plan, and they report an 81 percent success rate in having their recommended plans accepted by the courts.

The most interesting insight drawn from the "crisis management" style foisted upon New York's Pre-Sentence teams of paralegals is that they spend a considerable amount of time talking with probation officers who are preparing their own sentence recommendations for the court. The defense-oriented paralegal who can provide the overworked probation officer with reliable information on a client's social, family, and criminal background will often be doing a good service for that probation officer, who in turn may give extra consideration to the paralegal's interest in the client. That kind of benign influence on the probation officer's report may be even more beneficial for the client than the best alternative recommendation proffered by the defender — although this hypothesis is not easily subject to scientific testing.

In summary, our basic recommendation is that the reader interested in paralegal help in sentencing should look to jobs which are described earlier in the manual and which are initiated pre-trial, even though it is certainly possible to adapt these jobs to a strictly post-conviction service system. Whether paralegal help at that late stage is at all efficacious is, for now, an open question.

2.52 Appeals and Collateral Attacks

A. *Background*. Criminal appellate advocacy does not make a major distinction between appeals which are available by right, those which may be brought at the discretion of the appellate court, or those which are brought in a collateral forum, such as a petition for a writ of habeas corpus brought in a Federal court; in all three, the attorney is seeking an examination of the trial record, new evidence or other circumstances surrounding the conviction, and arguing for a reversal. The major work is done at the attorney's desk and law library, preparing the appellate brief or petition. Frequently, he never sees the client or other witnesses, or even the trial lawyer, in this process. This legal draftsmanship is often thought to be the exercise of the lawyer's highest intellectual and professional skills, even more demanding than presenting an oral argument before an appeals court.

The underlying assumption that appellate advocacy is preeminently lawyer's work is challenged by the Federal Community Defender in San Diego, who has a paralegal coordinating the office's appellate caseload and drafting many of the office's briefs. To be sure, that paralegal is an unusual individual: Benjamin F. Rayborn was a longtime inmate of the Federal penitentiary in Atlanta where he won some reknown as the "dean of the jailhouse lawyers."[21] He reputedly would not assist a fellow inmate in preparing a petition without first carefully examining the trial record, a professional scruple rarely found in that paraprofession. He has worked on thousands of such cases, both in prison and out.

Mr. Rayborn's legal research and writing is considered excellent by the attorneys with whom he works, although they often re-work his drafts. He is regarded as invaluable, however, in being able to examine the facts of a case and apply to it his knowledge or appropriate case and statutory law. The speed and accuracy of his analyses are the byproducts of his long, specialized experience, which few attorneys have. It is noteworthy that he always begins an analysis of issues to raise on appeal with the trial attorney.

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[21] See Jacob and Sharma, "Justice After Trial: Prisoners' Needs for Legal Services in the Criminal-Correctional Process," *Kansas Law Review*, Vol 18, No. 3, (Spring, 1970) pp. 593, 614 regarding Mr. Rayborn's earlier, post-institutional career.

B. *The Paralegal's duties:*

- To analyze the trial record and any other facts bearing on the propriety of the client's conviction.
- To identify from these, through legal research and analysis, arguable errors in the manner in which a conviction was arrived at or a sentence was imposed, and to support these arguments with appropriate legal authority.
- To prepare these arguments in the form of a draft brief or petition, for review, correction and submission by the attorney.
- To coordinate the total office caseload of appeals so that they are handled in an effective and timely manner. This involves the use of an elaborate "tickler system" and ongoing communication with the appellate staff.

C. *Potential for upgrading.* This paralegal, by hypothesis, is already superior to most lawyers in this specialty. But like most lawyers, his skills can be improved upon by having his work products carefully critiqued by his professional brethren. Even if his legal research skills are excellent, it is always likely that the tactics used for presenting an argument in a given case are subject to improvement, as are the form and style of his writing. Yet this is essentially a quibble, since the kind of supervision-by-review suggested here is no different from the comments any appellate lawyer likes and needs to get from his colleagues before submitting a brief or petition. In both situations, the purpose of the review is the improvement of professional skills and the protection of client interests. The only difference is that, when a paralegal is the draftsman, the goal of protecting client interests expands to also include the ethical obligation of the lawyer-principal to supervise his paralegal-agent and to knowingly adopt the latter's work product as his own. But for this inescapable need to treat the paralegal's work as that of a subordinate, the upper reaches of the job are envisioned to exceed in productivity that of most lawyers who are not specialists in this field.

D. *Special considerations.* Two questions emerge: where does one find another Rayborn? And what does one do if such an already-trained paralegal cannot be found? The general answer to the first question is that long-term correctional facilities keep producing such unusual paralegals and occasionally even spring them loose. Finding the gifted, knowledgeable, and ethical writ-writer remains a problem for which we can offer no better solution than contacting appropriate judges, lawyers, and corrections officials to identify candidates, and then examining their work products. Note that the relatively high proportion of "white collar" criminals in the Federal correctional system makes this an ususually fertile breeding ground of sophisticated writ-writers.

The alternative method of recruitement requires more time and patience: identify an intelligent paralegal with the inclination and facility to learn this specialty (preferably one with intentions to stay with the office some time) and then apprentice him to the appellate division. That apprenticeship is very much like the training in legal research and writing law students receive in their first year. Like such students, the paralegal can, in relative short order, begin doing cite checks, Shepardizing cases, and responding to inquiries such as, "Find me some cases in which the court permitted the jury to visit the scene of a crime." The able assistant in this role will be able to follow more general instructions as time goes on, and to do preliminary analyses of new cases as they come in for the attorney's review. Although a more modest role than the Rayborn prototype, this is very much an updating of the traditional "law clerk's" job, the value of which has not been seriously questioned. We would only point out that there may be considerable payoff in trying to build some longevity into this paralegal's tenure as an appellate law clerk; he need not be a law student at all, or if he is, he might be hired during his first year in expectation of keeping him in an apprenticeship role for some time. Note that these considerations have prompted the defender office listed below to hire a trainee for the more advanced role filled by Mr. Rayborn. The trainee (also a long-time resident of the Atlanta Federal Penitentiary) is currently assigned such tasks as responding to inmate mail, drafting trial motions, and the like.

E. *Other sources of information:*
The Federal Defender
925 1st Street
San Diego, California 92101
(714) 234-8467

Statsky, William P.
Introduction to Paralegalism
Chapter 12 ("Legal Research and Analysis")
West Publishing Co., (1974)

2.53 Parole Planning

A. *Background.* As yet, relatively few trial-level defender offices have sought to become "experts" in criminal sentencing, and therefore sentencing hearings rarely involve the resolution of conflicting, expert recommendations to the judge. The same is even more true of parole release hearings. Inmates may quite accurately perceive these as being no less consequential than sentencing hearings, but the fact remains that inmates have no right to counsel in these proceedings; and after some planning with correctional staff, inmates seeking a release on parole are normally left to their own devices in presenting their plan. However, with the recent establishment of "appellate public defender" offices, this situation may change. That possibility is suggested by the operations of the Illinois State Appellate Defender, whose paralegal "Release Counselors" help client inmates win release on parole or more appropriate services or placements within the correctional system. Basically, this paralegal job is analogous to the use of paralegals to help get a client released from pre-trial detention or to help avoid post-conviction incarceration. The service is premised on the idea that post-conviction "criminal" representation should not look solely to an appeal of that conviction, but should also take in other legally significant issues which are inescapably tied to the clients' sentence to an uncertain term in prison. This paralegal's job, therefore, may be viewed as a bridge between this chapter and the next—between "criminal" representation and inmate legal services. Note that the novel paralegal work described here serves to upgrade and formalize the longstanding, *ad hoc* assistance efforts volunteered by fellow inmates and correctional staff to prisoners who are getting ready for a parole hearing.

B. *The Paralegal's duties:*

- To conduct interviews with correctional and other staff, and to provide counseling to clients, for the purposes indicated below.
- To help clients prepare for parole hearings by collecting information on their progress in the institution, by preparing an evaluation of their ability to be reintegrated into the free community, and by arranging for appropriate living arrangments, employment, and social services for clients as parts of a proposed parole plan.
- To appear as a witness in Parole Board hearings.
- To prepare release plans in the community for clients whose cases have been reversed and remanded for a new trial or other proceedings, that is, clients who are seeking favorable bail conditions.
- To help incarcerated clients obtain needed services or to help them get transfers to appropriate mental health or medical facilities, to work release programs, and the like.

C. *Opportunities for upgrading.* Like the job of the bail aide or of the community services paralegal, this job should show improved effectiveness the longer the job holder stays in this position. He should be encouraged to continuously expand the network of community services used to facilitate parole release. He should occasionally confer with attorneys over the institutional impediments he encounters in his work, to explore whether these may be alleviated or removed. Moreover, to emulate the Illinois Appellate Defender's prototype, the paralegal could acquire the training and skills to conduct psychological counseling and to prepare sociopsychological reports on clients. Most of this paralegal's opportunities for rotation and advancement are in the correctional legal services area, in which he has more than a foothold already (see the next chapter.)

D. *Special considerations.* The major difference between paralegals observed in the areas of bail and community services planning and the paralegal on whom this job is modeled (Paul Vetter, formerly of the Illinois Appellate Defender) is that the latter also provided psychological counseling and reports. The preparation of such reports appears to be a useful aspect of this work, given the interest of the defense attorneys, of parole authorities and of the courts in the psychological condition of inmates petitioning to be released. Defender offices should consider employing paralegals with these skills wherever they seem highly desirable or necessary.

E. *Other sources of information:*

Office of the State Appellate Defender
180 North LaSalle Street, Suite 410
Chicago, Illinois 60601
(312) 793-5472

See Also:

Vetter, Paul, Jr., "Criminal Release Counseling — The Illinois Appellate Defender Program," *DePaul Law Review*, Vol. 24, p. 426 (1975). Mr. Vetter was one of the two release counselors. He holds a M.S. in Rehabilitation Counseling and is a graduate of a long-term prison facility.

CHAPTER 3. PARALEGAL SERVICES FOR SENTENCED INMATES

3.1 Introduction

3.11 Inmate Legal Services Needs

It is exceedingly rare for a prison inmate to need the services of a corporation lawyer, or one specializing in anti-trust, economic regulation, labor law, or any other kind of practice geared to the needs of large institutions in society. And the few who do need such counsel can normally afford to pay for it, there by putting it beyond the reach of the indigent legal services programs to which this manual is addressed.

Be grateful for those exclusions — for there is little else in the purview of the legal profession that is not sought by correctional inmates. This chapter uses the following scheme to classify these legal services needs:

- *General Civil Services:* Those service needs which are common to the larger class of the legally indigent of which inmates are but a sub-class — divorce, indebtedness, entitlement to government benefits, and the like. Many of these involve representation in administrative matters.
- *Specialized Civil Services:* Analogous to those "status offenses" which pertain only to juveniles, these "inmate status" service needs arise from the unique relationship between institutions and inmates: disciplinary proceedings, transfers, classification hearings, detainers, parole hearings, and so on.
- *Criminal Representation:* Post-conviction relief is the chief concern of incarcerated offenders. In addition, inmates are occasionally accused of committing crimes while serving time, ranging from jail break to homicide.
- *Affirmative Litigation:* Beyond individual needs for legal services, there is an apparent need of inmates as a class to have some of their conflicts with their custodians put before the courts or the legislature. Note that "affirmative litigation" in this sense connotes actions taken against a corrections department in which it is an involuntary, adverse party. This is to be contrasted with grievance mechanisms which are designed with departmental approval to surface inmate complaints about practices and policies and to resolve them, if possible, without redress to the courts or legislative authorities. The latter method of conflict-resolution is outside the scope of this manual.

Aside from whether or not a given inmate legal services program has the ability to respond to all of these needs, there is no question but that the ideal of comprehensiveness is widely, strongly, and expressly supported by the organized bar and the nation's criminal justice leadership.[22] The fulfillment of that commitment to prison inmates, a class of citizens who by operation of law have a relative surfeit of duties and a dearth of rights, is ultimately dependent on our practical ability to devise a mass-productive service delivery system which is both relatively inexpensive and competent. Paralegals, plainly, will have much to do in creating and operating that system.

3.12 The Prison Paralegal's Employment Setting

Planners of inmate legal services programs who seek to use paralegals must first of all deal with the prospective paralegal's employment setting.

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[22] Special Committee on Evaluation of Ethical Standards, *Code of Professional Responsibility*, Final Draft, July 1, 1969, American Bar Association, Chicago, Illinois, 1969, Canon 2: "A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available," pp. 13-44. See also National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*, Standard 2.2 ("Access to Legal Services"), U.S. Government Printing Office, Washington, D.C., 1973, pp. 26-28; and the American Bar Association, Commission on Correctional Facilities and Services, *Providing Legal Services to Prisoners: An Analysis and Report*, p. 25, (May, 1973).

For where the paralegals might fit in — organizationally, geographically, and physically — will be a major determinant of what he does.

However compelling the need of inmates for comprehensive legal service may be, it must be remembered that in any legal services program for the poor, there are limits to the range of services offered. What any paralegal does in behalf of inmate clients is first of all circumscribed by his employing agency's legal jurisdiction, and, secondly, by its administrative structure. Those agencies break out into four general categories: a public defender, an inmate legal assistance project, an inmate-run law clinic, and one operated by a corrections department.

If one includes under the heading of "inmates," pre-trial detainees and jailed misdemeanants, then surely the principal type of organization providing "inmate legal services" is public defenders. As we have seen in Chapter 2, a few defenders are construing that obligation to jailed clients in anything but narrow terms. We find the same broadening of responsibility to defender clients who have been convicted on felony charges. The only theoretical gap in what defender paralegals might do for inmate clients is in the provision of "general" civil services. And even here, one finds cooperative arrangements between a few defender agencies and counterpart civil legal services programs so that referrals for services are made relatively easily.

In one OEO-supported model program, a nonprofit corporation held subcontracts with local public defender and civil legal aid units. Cases that could not be resolved administratively were farmed out to the agencies, while potentially fee-generating cases were referred to individual members of the local bar. This project represented one of those rare instances in which one of the national networks of federally supported, civil legal service programs has become involved in the correctional setting.[23]

The second major kind of sponsoring auspice is a collection of disparate, *ad hoc* projects and law school clinical programs that seem to have a common focus of "inmate legal services," and are therefore not simply branch offices of more conventional civil or criminal programs. These special projects are both more enlightening and more problematic for purposes of our analysis: enlightening in that they are often models of the paralegal concept in practice, but problematic in that they are all demonstration-type projects and, as such, fairly exude impermanence. Consequently, the structure supporting much of this chapter rests on an exposed hill of sand.

A third kind of legal service mechanism using paralegals poses even greater difficulties for those in search of practical models. These are collectivities of "jailhouse lawyers" or "writ writers" within jails and prisons. At first blush, the idea of organizing this work force is very appealing. The motivation of such workers in mastering the technology of legal redress is palpably high: prison confinement induces a passion for concentrated thinking on such matters, and inmates are generally afforded a good deal of time for pursuits of the mind. Moreover, there is something in the democratic ideal that likes the idea of self-help lawyering. The effective, *pro se* advocate may well be the modern descendant of the "sturdy, independent yeoman" who, myth has it, gave birth to the democratic, egalitarian values of our society.

Third, in respect to the resolution of "inmate status" cases, it is a matter of common sense to point out that, in offering paralegal counsel to an inmate in an informal proceeding within the institution, the paralegal who is also an inmate, and who understands the personalities and circumstances involved, is likely to be the most effective paralegal counselor, all things being equal.

But applications of the inmate paralegal idea in prison have run into difficulties. First, few inmates have sufficient language and conceptual skills to do competent legal work, and no process that would "certify" one self-proclaimed writ writer and deny certification to another is likely to be regarded with much favor. Second, most institutions house short-term residents who have insufficient time to learn the paralegal craft. (Most corrections systems put long-term convicts in separate facilities, and these alone are ripe for organizing inmate paralegal clinics.) Third, even the most highly developed "inmate paralegal clinic" has only sporadic contact with outsiders and practically no opportunity for paralegal training and professional supervision. Fourth, writ writing has long been a profitable service industry in the inmates' economic system; reorganizing and regulating that free enterprise system so that services are distributed on a fair and disinterested basis poses severe problems.

But the most distressing problems of all emanate from the long-recognized fact that "the cons run the joint": a number of inmate law clinics which we have come across seem to have been regarded as one of the legitimate spoils to be contested over in the factional conflicts that consume most prison populations. As a result, the staff of outside legal services programs often avoid close identification with such inmate projects, or even with individual writ writers, for fear of becoming in perception and actuality the house counsel for a favored few. For their part, entrepreneurial writ writers do not much care for the outsiders, who offer free, competing services.

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[23] American Bar Association, *Providing Legal Services to Prisoners*, op. cit. footnote 22, "Addendum" (material to be included in the report at p. 15).

Running parallel to these problems of inmate factionalism is the reluctance of institutional administrators to contribute to what they feel is inmate control of institutions. In *Johnson* v. *Avery*, 393 U.S. 483, (1969), the Supreme Court acknowledged the legitimacy of this concern over the establishment of personal power structures by unscrupulous jailhouse lawyers and the attendant problems of prison discipline, but ruled, nonetheless, that the constitutional right of access to the courts was violated by a blanket prohibition against inmates advising others in the preparation of legal documents. The National Advisory Commission on Criminal Justice Standards and Goals incorporated the *Avery* decision in its standard on prison legal services: Assistance from other inmates should be prohibited only if legal counsel is reasonably available in the institution.[24]

None of this is to argue against the establishment of improved inmate-staffed paralegal programs, only to indicate that they have not, on the basis of project experiences we have learned about, *contributed very much* to the analysis and recommendations of this chapter. This is particularly discouraging because at least one of the projects, the Paraprofessional Law Clinic at the state correctional facility in Graterford, Pennsylvania, has achieved a well-deserved reputation[25] over several years as a well-organized, enterprising, and productive program. Evidence that it too has apparently suffered the kinds of problems recounted above has not led us to the conclusion that such programs cannot succeed, but that they probably cannot succeed without the aid of some outside resources. Indeed, this chapter might well have been very different if Pennsylvania prison inmates had merely a fraction of the outside professional and paralegal assistance which is offered prisoners in Massachusetts, Minnesota, and Kansas (to cite only three examples). In sum, we strongly recommend that efforts be made to revive, improve, and initiate inmate-assisted legal services programs.

This is not our conclusion in respect to the fourth and last type of organizational sponsor of prison legal service programs, that being a corrections department itself. Although the author has not personally examined the one major experiment of this kind, undertaken in the Texas correctional system, and is fully prepared to concede that such an expedient may be a vast improvement over the absence of any program whatsoever, still the structure of such a program is likely to be viewed as compromised by its intended clientele and is opposed on conflict of interest grounds by many in the legal profession.[26]

This is not to argue against departmental sponsorship of an inmate grievance mechanism, nor is it to say that a department cannot use legal talent for benevolent purposes. On the contrary, the rapid growth of grievance mechanisms — be they similar to grievance procedures used in labor-management relations, ombudsmen, or inmate councils — is very much to be welcomed, not as a substitute for, but as a complement to, other modes of legal redress. Other efforts by corrections departments and State Attorneys General to provide "house counsel" to correction agencies constitute a promising way to achieve progressive change. The latter concept has not yet been widely implemented, but it could clearly serve to institute reforms such as those being required through prisoners' rights cases, but without resort to litigation. But in both of these examples, the corrections department is operating both in the interests of its inmates and in furtherance of its legitimate self-interests, an appearance which is hard to sustain in departmentally staffed inmate legal services programs.

Two other aspects of the paralegal's employment setting are of concern. Both relate to the problem of physical access. The first of these access problems involves the geographical location of the inmates to be served. Many American penitentiaries have been deliberately constructed in rural surroundings far from any population centers. That is why so few defender programs, which are urban phenomena, have much contact with former clients who have been convicted and imprisoned. The experience of two law school inmate legal services programs illustrates the tenacity of the geography problem:

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[24] National Advisory Commission on Criminal Justice Standards and Goals, *op. cit.*, footnote 22, pp. 26, 27.

[25] See for example, "More Prison Inmates Turn to Legal Work for Selves and Others," *The Wall Street Journal*, November 20, 1974, p. 1.

[26] The American Bar Association, *op. cit.*, footnote 22, p. 25.

- The Minnesota correctional facility in St. Cloud is 75 miles from Minneapolis and the Minnesota Law School. Students in the LAMP (Legal Assistance to Minnesota Prisoners) program make far fewer trips to St. Cloud when the roads are covered with snow and ice. Unfortunately for those convicts, Minnesota winters are neither short nor mild.
- Students at the two law schools in Kansas serve as paralegals in the Legal Services for Prisoners, Inc. (LSPI) an organization seeking to meet the legal services needs of all of the state's felony prisoners. Because its orientation is only secondarily one of a clinical teaching program, LSPI has from its inception placed a full-time attorney in Hutchinson, site of the Kansas State Industrial Reformatory, which is 150 miles from the nearest law school, to insure that these inmates have the same access to services as do those from the other three institutions. That attorney is provided virtually no paralegal assistance, student or otherwise.

It should be borne in mind that the distance *to* a prison is not the sole geographical problem — the return trip back, to the staff member's "home base," presents problems not only for scheduling visits but also for staffing the office, where most of the legal research and writing is done. That separate, distant office is often a necessity because that is where the courts having cognizance over the inmates' cases are located.

Once the geographical obstacles have been surmounted, the paralegal may find himself confronted with a polite refusal to permit entry. For example, the rule of one corrections department once barred any form of paralegal activity: Investigators for an attorney-of-record will be confined to not more than two. Such investigators must be licensed by the State or must be members of the State Bar. Designation must be made in writing by the Attorney.[27]

In 1974, the Supreme Court struck down this absolute ban on the access of paraprofessionals to inmate clients. Observing that the rule imposed an intolerable burden on the right of access to the courts, the Court rules that access bans must be limited "to prospective interviewers who posed some colorable threat to security or to those inmates thought to be especially dangerous."[28]

Once inside an institution, the nature of the access of the paralegal to his clients can vary greatly. Free access to the general and restricted populations is clearly the *desideratum*, especially if the project wants to seek out unassertive inmates who need, but are reluctant to ask for, legal assistance. But the institutional authorities may prefer to keep the legal services staff in an assigned office and to take responsibility for identifying inmates who want to see the legal services staff and transporting them there. The determination of whether or not the paralegals can go directly to their clients can have a major impact on the kind and quality of the program.

Usually, legal services staff are assigned a small office somewhere in the institution where they may interview inmates. The proffer of an office is made less generously when the legal services program may bring suit against the institution, as well as provide more general civil and criminal legal assistance. It is not surprising that the "Prison Legal Assistants" (see Paragraph 2.34 in Chapter 2) who are given offices in all of New York City's detention centers do not handle cases directed against the institution, while attorneys from the Legal Aid Society's Prisoners' Rights Project, which specializes in reform litigation aimed at institutional policies and actions, must operate without offices in the detention centers.

The remainder of this chapter presupposes that some resolution has been achieved between the conflicting ideal of offering comprehensive legal services to all inmates and the practical necessity of meeting the organizational, geographical, and physical constraints affecting all such programs. After reviewing ethical considerations affecting the use of paralegals in prison, the sections which follow first enumerate other sources of information and then take up each of the four classes of legal services encompassed under the rubric of inmate legal services, describing in narrative form the paralegal activities and problems of implementation in each service class.

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[27] California Department of Corrections Administrative Rule MV-IV-02.

[28] *Martinez* v. *Procunier*, 416 U.S. 396 (1974).

3.13 Paralegals in Prisons and Legal Ethics

In the introductory chapter, the ethical constraints operating on lawyers and their paralegal agents were summarized. In essence, a lawyer-supervisor may use the services of a paralegal-agent, but that delegation must stop at the threshhold of offering legal advice or otherwise practicing law.

The United States Supreme Court, in *Johnson v. Avery* (393 U.S. 483) has held that lay representation cannot be banned by unauthorized practice rules in any prison where access to affordable, professional representation is closed. Accordingly, in post-conviction appeals, in intra-institutional hearings, in civil actions which are nominally pursued *pro se*, there is an enormous quantity of lay lawyering going on behind the walls.

Much of that "paralegal" activity is a positive disservice to its proported beneficiaries. It bears reminding that Mr. Johnson, the writ writer whose name appears in the landmark case, earned the esteem of no one for his legal talents, which were evidently thin. However well-intentioned, his performance does not personify an ideal model of the paralegal concept in action.

We therefore strongly urge that administrators of inmate legal services programs insure that the authentic public interests behind the ban on lay representation be preserved — that every paralegal working in the program be responsible to an attorney, who is prepared to vouch knowledgeably for the quality of the paralegal's work.

Beyond that guideline, we offer no rigid formulas. For example, the ratio of paralegals to lawyers is not a very useful test. In the introductory chapter, we mentioned two private law firms having a lawyer-layman ratio of 1-to-5 and 1-to-7 respectively. Both operate scrupulously within the canons and evidently provide distinguished, professional services.

Nor is the nature of the work product or the nature of the forum a simple touchstone. A conscientious lawyer may need to exercise extremely close supervision over a paralegal's drafting appellate briefs, or representing inmates in a parole release hearing. Yet the actual models on which these two roles were discussed in Chapter 2 are examples of advanced paralegals to whom a conscientious lawyer could well entrust considerable independent responsibility.

What is being urged here is, in fact, the substitution of conscientiousness for the more formal strictures which govern the lawyer-paralegal relationship outside of the prison setting. By these lights, the Constitutional right-to-counsel could and should be extended to virtually all the legal services needs of prison inmates — but that, in the process, "counsel" could and should be redefined to include those advanced paralegals of demonstrable competence, as qualified, independent practitioners in their particular specialties.

Before that millennium, inmate legal services administrators should use the constitutional permission to practice law without a license very carefully — even in situations like certain administrative hearings where client representation may be technically outside the ambit of the "practice of law."

3.14 Other Sources of Information

On prison legal assistance needs and programs generally:

- Materials from the paralegal manual of the Prisoners' Rights Project (Boston) in Appendix B.
- Jacob, Bruce R. and Sharma, K. M. "Justice After Trial: Prisoners' Needs for Legal Services in the Criminal - Correctional Process," *Kansas Law Review*, Volume 18, No. 3, Spring, 1970, p. 493.
- *Providing Legal Services to Prisoners: An Analysis and Report*, The Resource Center on Correctional Law and Legal Services, the American Bar Association Commission on Correctional Facilities and Services, 1800 M St., N.W., Washington, D.C. 20036 (May, 1973).
- Statsky, William P. *Inmate Involvement in Prison Legal Services*, The Resource Center on Correctional Law and Legal Services, ABA Commission on Correctional Facilities and Services, 1800 M St.,N. W., Washington, D.C. 20036 (March, 1974).
- Various articles appearing in journals such as *Corrections Magazine*, published by the Correctional Information Service, Inc., 801 Second Avenue, New York, N. Y., 10017.

On the planning of paralegal programs and the training of paralegals in civil law practice:

- Statsky, William P. *Introduction to Paralegalism*, West Publishing Co., 1974

Various publications and services of:

- The National Paralegal Institute
  2000 P St., N. W.
  Washington, D.C. 20036
  (202) 872-0655

Projects offering broad-scale legal services for inmates:

- Legal Assistance for Minnesota Prisoners (LAMP)
  University of Minnesota Law School
  TNM Building
  Minneapolis, Minnesota 55455
  (612) 376-3353
- Legal Aid and Defenders Society
  University of Georgia
  409 Lumpkin Street
  Athens, Georgia 30601
  (404) 542-4241
- Florida Legal Service, Inc.
  2614 S.W. 34th Street
  Gainesville, Florida 32608
  (904) 377-4212
- Law Center
  University of South Carolina
  Columbus, South Carolina 29208
  (803) 777-8194
- Legal Services for Prisoners, Inc.
  5600 W. 6th Street
  Topeka, Kansas 66601
  (913) 272-4522
- Office of the Defender General
  State of Vermont
  43 State Street
  Montpelier, Vermont 05602
  (802) 828-3168

NOTE: The previously cited projects are, or have been, affiliated with the Consortium Center of States to Furnish Legal Services to Inmates, Studies in Justice, Inc., 1776 F St., N.W., Washington, D.C. 20006, (202) 331-1541.

- The Prisoners Rights Project, Inc.
  2 Park Square
  Boston, Massachusetts 02116
  (617) 482-2773
- The Roxbury Defenders
  124 Warren Street
  Boston, Massachusetts 02119
  (617) 445-5640

3.2 Providing General Civil Legal Services

3.21 Paralegals in Civil Legal Services Programs

The administrator of a defender office or an inmate legal assistance program who wants to provide general civil legal services to inmates should look first of all at what the rest of the legal profession has been doing to modernize delivery systems in this area. Volumes of information on this subject have been written, some of which are cited below.

The principal, if not exclusive, repository of experience in delivering civil aid to the poor are the projects now administered through the National Legal Services Corporation, one of whose grantees, the National Paralegal Institute, was established to provide materials, technical assistance, and training in the use of paralegals. The collective experience of these legal services projects can be translated into the following three areas where paralegals can expand and improve the provision of civil legal services to inmates (and note that they are suggestive of ways to improve service delivery in other areas, as well):

- *Outreach*. Typically, these paralegals are recruited for their ability to communicate easily with the population to be served. The importance of this function in a prison legal assistance program was indicated in an article by Chief Justice Burger in which he observed, ". . . we must learn. . . that prisoners who do not complain are often the truly lost souls who have surrendered and cannot be restored."[29] A long-sought tool for outreach workers has been a device to make the interview an effective "legal check-up."[30]
- *Lay Advocacy*. Just as in prison disciplinary hearings, non-lawyer representation is generally sanctioned in the resolution of many civil disputes, including such formal proceedings as a welfare "Fair Hearing." Effective advocacy, both lay and professional, has never been a simple exercise in agression. Yet it has been shown that the skills of effective advocacy can be taught to non-lawyers, and may be applied to a wide range of problem areas within the inmate legal services program's bailiwick.
- *Case Processing*. Following the lead of the private bar, legal services attorneys have broken down the constituent parts of many of their common cases and have found many of these to be fully delegable for paralegal processing. These systems for using extensive

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[29] Burger, "Post-Conviction Remedies: Eliminating Federal-State Friction," *Journal of Criminal Law, Criminology and Police Science*, Vol. 61, 1970, p. 148.

[30] Brown, "Periodic Legal Check-up," *Journal of the State Bar of California*, Vol. 37, 1962, p. 532. See also, Brown, *A Manual for Periodic Legal Checkups*, California Lawyers' Service, San Francisco, 1974.

paralegal help in domestic relations, landlord-tenant, consumer and, other such cases can and should be borrowed wholesale by inmate legal services programs.

Administrators should be slow to assume that the need for general civil services, not directly tied to the inmate-prison relationship, is insubstantial. It is a maxim of the neighborhood legal services lawyer that whatever problems brought a random new client to the office, if you shake him gently for a long enough time, plenty of other, authentic legal problems will also drop out. So too with inmates: with an outreach program which includes a legal check-up for every new convict coming into the system, the program may well develop a sizable "poverty law" practice.

3.22 Paralegals in the Provision of General Civil Legal Services to Inmates

Experience thus far in a number of inmate legal services programs does not strongly support the hypothesis stated above, that there is a potentially large "poverty law" practice to be developed behind the walls. On the contrary, some projects which offer this service as well as institutionally related services find that the former constitutes a small part of the caseload. For example, in the Kansas program, during one nine-month period, less that 5% of the closed cases were in this category.[31]

But even here, one should be cautious in drawing conclusions. For example, that law student-assisted program reported that 83% of its closed cases in the same time period were disciplinary cases — but that only 21% of the total workdays were devoted to the disciplinary matters. Thus, 80% of the effort went into about 15% of the cases, perhaps a third of which were of the general civil law type. It is reported that in the comparable program in Minnesota, 80% of the students' work is in cases like divorce, consumer credit, landlord-tenant problems, and property claims — all classic poverty law cases.[32]

But were they really? Most legal services clients seeking a divorce simply want *de jure* recognization of the *de facto* circumstances. But the prison inmate is far more likely to want to contest a divorce action or a custody suit, and that becomes anything but a run-of-the-mill, "poverty law" domestic relations case. This illustrates our difficulties in describing the dimensions of the predictable legal services needs to be found in prisons.

Rather than list all the civil and administrative cases an aggressive legal services program can help inmates with — let alone enumerate the ways in which paralegals can help to handle that caseload — we can abbreviate our discussions with three comments:

- As with every kind of legal services program for the poor, a prison legal services project will get a disproportionately high number of cases it is looking for and is best equipped to handle. Projects may depress the relative numbers of general civil law cases by simply not looking for them, a process that is aided by the fact that many civil problems warranting legal counsel are inchoate, unlike, say, a complaint that an inmate has violated the prison rules. Projects which follow this path of least resistance should at least do so knowingly.[33] Better yet, they shouldn't do it at all, at least not if they have free access to the inmate population. (Restrictions on access will have a depressant effect on the poverty-law caseload.)
- Even without a methodical screening for general civil matters, projects offering any assistance to inmates in this area can expect a small but time-consuming caseload involving such problems. It is not enough to delegate major elements of this workload to paralegals — the projects should seek out and adapt systems of getting this paralegal work performed *efficiently* so that the routine forms and procedures involved in, say, a domestic relations case, or a request for social security or welfare assistance for a would-be parolee, are all laid out in advance and are easy to follow.
- Finally, the lawyer-administrator who is content to read only these words of admonition — who fails to supplement this volume with

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[31] Information supplied by Legal Services for Prisoners, Inc., to Apt Associates; reported in Apt Associates, "Exemplary Project Validation Report: Legal Services for Prisoners, Inc., Topeka, Kansas," submitted to LEAA, January 10, 1975, p. 8.

[32] Serrill, "Profile/Minnesota," *Corrections Magazine*, January/February, 1975, pp. 21, 22.

[33] For a discussion of how legal services programs tend to "find" problems they are conveniently equipped to meet, see Mayhew, "Institutions of Representation: Civil Justice and the Public," *Law and Society Review*, Vol. 9, Number 3, Spring 1975, p. 401.

some of the information suggested below — is no better than 99.9% of the members of his profession, past and present, who places the American legal system into such a deplorable state in the first place.

3.3 Providing Specialized Civil Legal Services for Inmates

3.31 Introduction

Being an object of control by others is a status which has never enjoyed much popularity among those who have tried it. As prisoners' advocates, lawyers and paralegals are helping to bring that power of control over inmates into greater conformity with the outside community's standards of fair play, or "due process." In some correctional agencies, the application of these precepts has become an integral part in the creation of a new model of penal administration (called the "justice model" in contrast to the traditional "rehabilitation" model of penology). Wherever this process in taking place, most of the inmates view the change as a positive reform, as do a significant number of correctional administrators, who perceive the model as being not simply more humane, but one that significantly reduces the level of retaliatory conduct which prisoners visit upon their keepers from time to time.

Whatever virtues one cares to ascribe to the "justice model," its administration is anything but convenient or efficient. The substantial work entailed in running the quasi-legal elements of the system is borne very largely by a correctional administration already stretched thin by shrinking resources. To the degree that the model's adversarial proceedings are conducted by representatives of involved parties, those representatives are usually "substitute counsel" — paralegal lay advocates. And because this new system of penal administration is being implemented so quickly and in so many places — inspired in no small part by new case law requiring it in certain circumstances — it seems safe to say that paralegals doing this kind of work in prisons constitute one of the fastest growing sectors of the wider paralegal movement today.

Adversarial proceedings are by no means the only methods of dispute settlement subsumed in the "justice model." Other techniques which the model borrows from society's legitimized tools of conflict resolution are those of a legislature (or, at least, an advisory council) and of an ombudsman (or, at least, an inspector general). However, this section is concerned solely with the use of more-or-less formal hearings and other opportunities for lay advocacy whereby decisions over an inmate's status within the system can be significantly influenced. In this function the paralegal acts very much like a lawyer (rather than a legislator, mediator, or judge). Moreover, the larger issues of inmate grievance resolution are the subject of a separate Prescriptive Package: Keating, McArthur, Lewis, Sebelius and Singer, *Grievance Mechanisms in Correctional Institutions*, The Center for Correctional Justice, 1975.

Far and away the most conspicuous part of the paralegal's job in this role is the counsel and representation he offers inmates brought up on disciplinary charges. The Supreme Court's decision in *Wolff* v. *McDonnel*, 418 U.S. 539 (1974), sanctioned the use of "substitute counsel" in such hearings, although it did not list this among the required procedural safeguards of such hearings. Meanwhile, there are indications that the *Wolff* protections — written notice, a hearing before impartial authorities, and so on — will be extended to other administrative actions correctional administrators may wish to bring when, for example, a reclassification, or transfer, or confinement to segregated quarters constitutes a punitive, substantial deprivation to the inmate. And again, many states will voluntarily add to the affected inmate's right to a hearing in these cases a right to substitute counsel. Further, of course, the parollee or the probationer facing a return to prison under a revocation proceeding has been afforded a number of procedural protections, including, in this instance, a limited constitutional right to counsel. [*Morrissey* v. *Brever*, 408 U.S. 471 (1972), and *Gagnon* v. *Scarpelli*, 411 U.S. 778 (.972)]

3.32 Disciplinary Hearings

Under the guidelines laid down in *Wolff*, inmates who are being brought up on charges of violating institutional rules, or, at least those who face possible punishment as severe as a loss of good-time credit or placement in solitary confinement, must now be given written notice of the charges, a hearing before an impartial examiner or group no sooner than 24 hours after such notice, and a written decision by that body as to its findings and conclusions. While denying such inmates a constitutional right to a lawyer or substitute counsel in disciplinary cases, the Court's decision seemed to encourage continuing experimentation beyond the minimum standards required by the Constitution, and thus appeared to sanction the widespread practice of at least allowing inmates to make use of paralegal advisors wherever and whenever these are available.[34] *Dicta* in the decision indicated that a constitutional right to substitute counsel arises in cases having complicated issues or ones in which the inmates are illiterate.

Given this background, it is hardly surprising that most of the legal services programs for prison inmates have a substantial paralegal work force who spend a substantial amount of time responding to inmate requests for help in disciplinary hearings. In the Kansas program, for example, 83% of the total caseload in one nine-month period involved disciplinary board hearings, amounting to 1,583 such cases.[35]

The Kansas example helps to highlight a number of problems which affects all the programs offering representation in disciplinary cases. First, about one-third of the Kansas disciplinary cases (532) arose in the state penitentiary, which is serviced by law students, all of whom have some orientation and training for their paralegal responsibilities. But two-thirds of the hearings (1,050) involved inmates at the Industrial Reformatory in Lansing, in which the inmates' counsel was a staff lawyer (indeed, disciplinary matters constituted 88% of his caseload). If we assume that paralegal counsel at the penitentiary were competent, the use of a licensed professional at the reformatory appears, on the face of it, to be a classic misallocation of resources (although it can be argued on both ethical and practical grounds that the *sine qua non* of a truly professional legal services program — however numerous the paralegals working in it — is the presence of at least one supervising attorney, a minimum which is all the Lansing part of the program could afford during the period when its caseload was analyzed).

Second, and more important for our purposes, there is the question as to whether the assumption made above is correct — that in Kansas, as elsewhere, paralegals do perform competent services as substitute counsel in situations like disciplinary hearings. As a general proposition, it has been shown that some paralegals (and not just law students) have performed well, even at a highly sophisticated level, in this capacity. Unfortunately, there is no empirical evidence to show whether this potential is being realized in the prison legal services programs. Thus, for example, there are no qualitative figures on how the outcomes of paralegally assisted cases in Kansas compare with those in which the inmates were represented by a lawyer. This lack of research into the effects of using paralegals is endemic in the field.

Third, and by far the most troublesome, a number of people with experience in this field have concluded that the competency of counsel, substitute or otherwise, is not really at issue. *Wolff*, it is felt, has brought into being a somewhat cumbersome system which insures only the appearance of fairness, not fair results. That it involves administrative headaches can hardly be questioned: the Kansas figures, projected over a year's time, indicate that the department had to type up and deliver over 2,000 charges, convene as many hearings (with all its scheduling problems, since correctional officers work in shifts to provide 24-hour security), and issue as many written decisions. Further, one need not be "guard-oriented" to also appreciate the stress corrections officers must feel when they observe serious infractions, write up a report, serve as their own quasi-prosecutor, and subject themselves to the skeptical inquiries of a hearing . . . time and time again.

But the essential difficulty may not lie in the problems of administration or in the unpleasantness in requiring correctional officers to be both policemen and prosecutors. Minnesota's system, for example, has greatly reduced the latter tensions by hiring paralegal prosecutors for its correctional institutions. Rather, the system's inmate-oriented critics say that all this stress and strain is for naught: inmates brought up on charges receive pretty much the same punishment that they would have received anyway. In fact, given the composition of the hearing board, some inmates obtain a sterner measure of punishment than they would have under the more informal system in place before the reforms.

This was underscored in the reported case of an inmate who was one of the founders of the Paraprofessional Law Clinic in the Graterford facility in Pennsylvania. This individual is said to have stopped accepting requests for help from inmates facing disciplinary charges after the first several cases in which he served as substitute counsel: in every such instance, the paralegal's client was given the stiffest penalty permitted under the rules.

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[34] As of 1974, 41 states allowed inmates to have counsel or substitute counsel in disciplinary hearings. American Bar Association Commission on Correctional Facilities and Services, *Survey of Disciplinary Practices and Procedures*, Wash., D.C. (Rev. Ed., Dec., 1974).

[35] Apt Associates, op. cit., footnote 31, p. 8.

Meanwhile, the Prisoners' Rights Project, with numerous paralegals working in two Massachusetts correctional facilities, has simply terminated representation of inmates in disciplinary hearings. A staff lawyer put it bluntly: "The best we could do is get a phony 'Inciting-to-Riot' charge broken down to 'Disrespect for an Officer.' But the inmate can get that for himself. Sometimes they were better off if we didn't show up at all."[36]

The source of this disillusionment stems from the nature of the charges being administratively litigated and the nature of the body serving as the hearing board. First of all, the most common of these charges is based on a correctional officer's testimony of inmate wrongdoing he has personally observed, and that is a very hard rap to beat. Many of the other kinds of charges emanate from information supplied by inmate informers, who need not be called to testify under the *Wolff* rules, and that is an even harder case to defend against.

The hazards of prison life for guards and inmates alike, with a concomitant necessity of establishing and maintaining order by correctional administrators, probably persuaded the Supreme Court to not only permit corrections departments to invoke sanctions against inmates on the basis of anonymous information from informants, but to also permit corrections departments themselves to staff the hearing boards handling disciplinary cases. The only requirement to establish impartiality is that the correctional staff sitting on the board have no immediate involvement with the cases before them. Nonetheless, given the particularly tense nature of prison life — particularly as reflected in the stream of allegations flowing to a disciplinary board — correctional staff, much like inmates, tend to view their environment as an "us-and-them" situation. And it is different for such a staff member to side with "them" when a case boils dawn to which petitioner is telling the truth, the board member's colleague or the inmate.

One obvious way to reduce this conflicted situation is to have the hearing board made up of outsiders, a reform currently being pressed by the Prisoners' Rights Project in Massachusetts. The logistics of implementing such a reform would no doubt be problematic, and the idea of having uninitiated "amateurs" sitting in judgment of the department's proposed disciplinary actions would no doubt stir unrest among many officers. But in the judgment of this reform's proponents, it would produce a far greater measure of justice than the present system. Moreover, it might substantially reduce the need for paralegal assistance for accused inmates, which, as we have seen, is even now considered to be a dubious inmate benefit by some.

Perhaps a less disruptive reform would be to add an outside appeals body to the present system. Here, paralegals could be of substantial help to inmates by drafting petitions explaining their dissatisfaction with the hearing board's decision. Yet this is not a panacea: the inmate may well have already served his disciplinary time in solitary before the appeal is heard, and, unless the appeals body holds a completely new hearing, it will have little basis for altering an earlier judgment as to who was telling the truth.

After reciting all these difficulties in administering a just system of internal prison order, it must be noted that *Wolff* is still the law of the land, and it still encourages, in a somewhat backhanded manner, paralegal assistance to accused inmates. There may be short-run, tactical merit in providing such counsel to insure that the basics of the *Wolff* are being fully implemented in a given institution, even though the paralegals may be more productively employed in other areas at a future time.

Or it may be that the frustrations expressed to us over the seeming fruitlessness of having inmates represented in disciplinary hearings is simply wrong-headed — that, contrary to the impressions of many people in the field, paralegal assistance can make a measurable, beneficial difference to inmates in disciplinary hearings. Alternatively, paralegals may be very beneficial in providing behind-the-scenes advice to inmates getting ready to make a *pro se* representation in a disciplinary hearing.

The point is that we have no factual basis for making a recommendation one way or the other in this area. The absence of empirical research is to be lamented on very practical grounds. For if the critics are right, there are now hundreds of paralegals, most of them law students, spending thousands of hours performing marginally useful services for inmates — or, worse, actually making their lot somewhat worse. And the gentlest thing one can say about that possibility is that, if true, it represents neither good professional training nor productive paralegal services.

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[36] Interview with staff of the Prisoners' Right Project, Boston, Massachusetts, June 1975.

Note that in paragraph 3.23, publications are recommended which describe methods of recruiting and training paralegals to work as lay advocates in a prison setting and elsewhere. One cannot project a "model" of how the technology of lay advocacy applies to the representation of inmates in disciplinary hearings (or other forums) because of the wide variations in practices and employment settings from state to state and, indeed, from institution to institution. Each project, therefore, must adapt the precepts of lay advocacy to the institutional circumstances it faces. The publications previously cited may help to accomplish that objective.

3.33 Classification and Transfer Hearings

In most states, decisions as to a particular inmate's status are arrived at in a formalistic manner. For example, it is common now to first send a sentenced felon to a diagnostic and classification center for a matter of days or weeks, so that each new inmate can undergo an assessment as to his circumstances and needs, from which a tentative plan is developed meeting the various correctional goals of incapacitation, retribution, deterrence, and rehabilitation. The plan will determine where the offender is to be housed; what work assignments are to be offered; what educational, vocational, or other rehabilitative services he is to be afforded; and what other privileges he is to enjoy. Many of these are determined by the security status he is given, e.g., maximum security confinement. While such a plan typically envisions future changes in the inmate's classification — which, not incidentally, offers the inmate some inducements to cooperate with correctional staff and procedures — the later rites of passage are normally dignified with a more or less formal assessment of the inmate's behavior and progress, and often involve a meeting with him, generally called a "reclassification hearing."

These hearings can be categorized by their results. Ones that lead to a finding that the prisoner needs a more restrictive placement in the system are basically disciplinary in nature. Ones that conclude that no change in the inmate's status is warranted constitute a neutral, if disappointing, review mechanism that has much in common with parole release hearings which lead to the same result. And the third is also like a parole release hearing that produces a more pleasant outcome for the inmate.

Paralleling these classification hearings are systems to transfer an inmate from one facility to another. Often these are *de facto* disciplinary or classification decisions, as when an inmate leader is sent to another, comparable correctional center with the intent of making the convict culture a more tractable one in the first institution but without making a specific finding of misconduct on the part of the individual involved, whose classification and conditions of confinement are unchanged. If that transfer effectively deprives the individual of association with friends on the inside or family from the outside, so be it. Conversely, such a transfer can serve as a reward without formally stating it in those terms.

The courts are increasingly examining classification and transfer decisions as to their effect and intent, and in some instances *Wolff* v. *McDonel* standards of notice, hearing, and a written decision have been applied whenever the proposed action is effectively punitive.[37] Hence, the role of paralegals in classification and transfer hearings is essentially the same as in disciplinary hearings. However, the creative advocate can use this setting to do more than help the client avoid adverse decisions. He can use it as a forum to obtain a transfer to a more pleasant institution, or a reclassification to a more advantageous status. It is to be hoped that, in time, inmates and their counselors can expand their ability to use these hearings in this manner. Indeed, it would be desirable if they could, under certain circumstances, actually initiate classification or transfer hearings, rather than wait for the department to do so.

3.34 Lifting Encumbrances: Detainers, Warrants and Wrongly Computed Sentences

The inmate whose correctional status is clouded with other criminal charges or other convictions is often in need of help in straightening out these collateral matters, for the warrant on a pending charge in the same jurisdiction, or a detainer based on a charge in another jurisdiction, may put severe restrictions on his classification status in his present place of residence. Moreover, the phrase, "credit for good time served," is an intellectual construct that often becomes an arithmetical tangle when, for example, an inmate has recently spent pre-trial time in three different jails, during which time an earlier parole was revoked, and since which he has been sentenced on two charges, without specifying whether they were to be concurrent or consecutive. Correctional record keepers have been known to sort out less complicated computations than this in a manner that is erroneous and detrimental to the inmate's interests.

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[37] See Toal, "Recent Developments in Correctional Case Law," *Resolution of Correctional Problems and Issues*, Vol. 1, Special Issue, South Carolina Department of Corrections, Summer, 1975, pp. 73-83. See also Plotkin, "Recent Developments in the Law of Prisoners' Rights," *Criminal Law Bulletin*, Vol. 11, No. 4 , July-August, 1975, pp. 407-408.

Taking the sentence computation matter first, inmate legal services programs would be well advised to include at least a quick review of the department's calculations as part of an early "legal checkup" for new prisoners.[38] There are a number of reasons why identifying questionable calculations early is helpful: both the department and the local courts have vital information on the sentence and have it still easily accessible. The program which has ample time to look into a given case can save much wasted effort by "batch processing" such cases — that is, accumulating a number of them before going to court records, for example. Also, a quick screening involving both the client and a member of the legal services staff will help to surface meritorious cases of even the most passive individuals, who might otherwise never raise questions about the accuracy of the department's calculations.

Although the skill most needed to conduct this work efficiently is an ability to obtain and rationally order a series of documents, subjecting these to the appropriate formula for computing the sentence under existing law, the work is not ministerial: there is often room for interpretation over the sometimes ambiguous nature of an inmate's earlier status, and even when the inmate's case for recomputation is air-tight, it is far better to persuade corrections officials of their error than to resort to litigation. The job, therefore, entails arithmetical skills, a knowledge of correctional law, and tact.

Detainers, bench warrants, and arrest warrants on file with the department constitute a more onerous and complicated problem. Occasionally, the matter is one of straightening out a problem of red tape, as when a bench warrant was issued to produce a defendant whose non-appearance was a result of his being in prison. But even here, the problem involves an outstanding criminal charge, and that is of substantive concern. On his own, the informed inmate can work to get the charge disposed of by trial. His other option is to seek to negotiate a plea, preferably one having a concurrent sentence no longer than his present one, or to obtain an outright dismissal. For this, he generally needs counsel, and, as a practical matter, he will have appointed counsel only if the outstanding charge is in the local jurisdiction (and even here, that attorney may himself need the specialized counsel of the inmate legal assistance program).

The paralegal working on detainer problems is very much in the posture of an attorney, for he is preparing the case for purposes of obtaining the most advantageous disposition from the client's perspective. This involves three elements.

First, he must know the facts and circumstances surrounding the client's present incarceration, such as his parole eligibility date, the general behavioral pattern of the parole board as it is likely to affect this inmate, plus correctional law and practices in the jurisdiction. From these, the paralegal can make an honest estimate as to what rehabilitation programs, if any, the client may be able to enter if the detainer is lifted, and can otherwise represent to the prosecutorial authorities the real consequences of having the reason for the detainer unresolved.

Second, the paralegal should get as clear an understanding as is possible of the outstanding charge: what it is, the facts surrounding it, the possible strength of the prosecutor's case, and the general reputation of that DA's office regarding pleas and dismissals. Obviously, the staff will have a better grasp of this last factor in respect to neighboring jurisdictions. Although it is harder to get a fix on more distant prosecutors' offices, that very distance is a potentially helpful factor, because of the prosecutor's costs in transporting the client there.

Third, the staff must weigh these factors, discuss them with the client, and mutually decide on a course of action. There are two basic alternatives, although they are not mutually exclusive: send a "180-day" letter, or call the prosecutor to discuss a possible dismissal or plea.

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[38] See footnote 30, above. See also recommendations of the ABA Commission on Correctional Facilities and Services, *op. cit.*, footnote 22, on the importance of an early legal interview on these and other issues with all incoming prisoners, pp. 22, 25.

Under the Interstate Agreement on Detainers, the inmate can cause the corrections department to send a letter to the "detaining" jurisdiction, certifying the inmate's term of confinement and requesting a trial on the outstanding charge within 180 days. If the prosecutor fails to try the defendant within that time period, the charges can then be dismissed at the inmate's initiative.

The alternative is a kind of plea bargaining by phone. In some situations, this is simply an expeditious way to obtain a dismissal the inmate would likely get anyway, as when the detainer is for a misdemeanor charge against an inmate serving time on a felony conviction. But more often than not, the prosecutor will want to talk it through before deciding what he will offer. These are real negotiations.

Note that we described the legal services actors in this process as the "staff," obscuring whether this was a lawyer or paralegal or both. In some projects, it is the last of these, with the attorney taking responsibility for advising the client and talking to the DA. However, in the Washington, D.C., Public Defender Service, a senior paralegal, working under the supervision of an attorney, was given the primary responsibility of preparing detainer cases, and was often delegated the job of negotiating with prosecutors for favorable dispositions. He enjoyed an excellent reputation for his performance in this role, partly because of his thorough grounding in corrections law, and partly because of his mature telephone manner. This is a clear example of a situation where the conscientious legal services program should consider delegating the job to a paralegal only if that individual is very much like a professional peer in that relatively narrow specialty.

3.35 On Parole and Probation Revocation and Parole Release Hearings

Two recent Supreme Court Cases, *Morrissey* v. *Brewer*, 408 U.S. 471 (1972) and *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973), have reshaped radically the procedural requirements for the revocation of parole and probation. Both revocation processes now require a two-stage procedure, a "preliminary hearing" shortly after the arrest and a subsequent revocation hearing. The parolee or probationer is entitled to written notice, disinterested hearing officers, and opportunity to hear one's accusers and to be heard, to put on one's own evidence, and to have the decisions arrived at put in writing. *Gagnon* accorded a probationer and, by inference a parolee, the right to counsel in the second hearing when, but only when, the circumstances seem to require it (a case-by-case determination to be made by the probation or parole authorities).

Many inmate legal services projects provide substitute counsel for parolees in revocation hearings. Typically, these are third-year law students under local "student practice" rules, although a rational scheme could be devised to permit other trained paralegals to serve as advocates in these limited-focus, informal proceedings. Otherwise anomalies such as the following may occur: the Public Defender Service (PDS) for the District of Columbia orchestrated a student-counsel program to represent jail inmates in disciplinary hearings. The PDS coordinator of the program was also the law students' trainer and was a corrections paralegal with considerable experience in that specialty (it was he who negotiated detainer cases, as discussed in the previous section). However, since he had only recently decided to go to law school himself, he was barred from personally representing any of the inmates. Although parole revocation hearings are more momentous than the disciplinary hearings described in this example, it is questionable whether third-year law students are the *only* kinds of substitute counsel who can or should represent clients in either type of hearing.

For the parolee and his counsel, a revocation proceeding involves difficult charges to answer. If they grew out of an arrest, it may not matter that the parolee has a good defense to that arrest if the defense case concedes his having violated one of the technical conditions of his parole.

The parolee's most effective answer to the revocation charge may not lie in a denial of the allegations but in showing mitigating circumstances. Obviously, it is not enough to show that there were *some* mitigating circumstances; the advocate must persuade the board that these are sufficient to exonerate the parolee, and that requires effective advocacy indeed.

Since the sanctions involved and the client's burden of proof are both considerable, the indications are that any paralegal serving as counsel in parole revocation cases should either be a supervised, apprentice lawyer or an experienced paralegal of proven skill. In probation revocation hearings, which are held before a judge, paralegals should either be third-year law students entitled to represent clients in court, or should serve as assistants to lawyers handling such cases.

Given the recent development of the law represented by *Morrissey* and *Gagnon*, which is based on the theory that withdrawal of parole or probation represents a "grievous loss," requiring the timely application of some form of due process, it should come as no surprise that there is growing interest in providing some form of due process in procedures involving the grant of parole. A series of New York cases and, more recently a New York statute, requires the state's board of parole to inform inmates of the facts underlying denial of parole.[39] This may well be the opening wedge in a movement to apply the *Morrissey* and *Gagnon* requirements to the parole grant process.

The use of paralegals to help inmates prepare a plan justifying release before a parole board was discussed in the final section of the previous chapter (Paragraph 2.53 Parole Planning) to which the reader is referred. But it should at least be noted that this "appellate defender" paralegal role is also a vital aspect of a comprehensive inmate legal services program. If the appellate defender's office assumes responsibility for this service, it can perform the work far more effectively by using the staff of a corrections legal services program to serve as "eyes and ears" in the case preparation. Knowing what is really going on in the institution, and framing the would-be parolee's case accordingly, is perhaps half the battle.

3.4 Criminal Representation

Inmates and judges share major interest in one vital area of potential inmate legal services. Both are deeply concerned about post-conviction attacks on the charge(s) resulting in conviction and incarceration. Judges are overwhelmed by the volume of post-conviction petitions directed at them by the convicted; the convicted clutch at every available procedural straw in a strenuous effort to overturn their conviction.

The administrative dilemma of the judges is real. The Administrative Office of the United States Courts reported that in Fiscal Year 1974, submission of petitions from State and Federal prisoners totalled over 18,000, representing almost 20 percent of all civil cases filed in Federal court. The overwhelming bulk of these cases were *habeas corpus* petitions embracing a broad range of attacks upon the conviction underlying the inmate's imprisonment. Most such petitions are *pro se*, and they frequently are unclear and inarticulate. Judges and their clerks labor mightily to decipher the facts of each case and the grounds for each petition, but often they simply cannot understand them. It is a time-consuming and frustrating business.

Inmates, on the other hand, know the legends of post-conviction attacks that have led to freedom for other inmates. The quick release of a number of Watergate defendants on motions for a reduction of sentence convinced many more inmates of the value of perseverence in the legal struggle. Currently, inmates who want to join the post-conviction legal fray must depend primarily on their own wits or seek out help from fellow inmates practicing as jail house lawyers.

One of the most positive contributions an inmate legal services program can possibly perform for both inmates and the courts is to introduce authentic legal competence into the struggle for post-conviction relief. By examining alleged grounds for relief, helping those with deserving claims and advising those with groundless claims, a legal services program can provide greater justice for inmates and more efficiency for the judicial system.

The paralegal aspects of post-conviction work are described in paragraph 2.52.

Cases involving criminal charges against a specific inmate offer additional potential for paralegals working with inmates. Prosecutors preparing a criminal case against a prison inmate generally have the whole correctional staff at the institution as sources of information about the case and its surrounding circumstances. Defense attorneys have their clients, and often little more, with which to put together their case. Conscientious counsel will interview other inmates and staff, but starting out in the dark, they may learn less in a week's investigation than they could find out from an hour's interview conducted by a knowledgeable inmate legal services paralegal.

We need only add to the spate of recommendations in Chapter 2 about paralegals in criminal defense work the following: if the defense counsel is not one of the inmate legal services attorneys, he should be given the assistance of that staff as a matter of formal policy. Many of these cases are not effectively defended by attacking the simple facts of the prosecution's case, but in raising questions about the intent and state of mind of the principal actors. For that, inside information about what the case entails is essential to the defense case, and a knowledgeable paralegal not only can help to ferret that out, but also can help to locate effective witnesses.

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[39] See *Johnson v. Chairman, New York Board of Parole*, 363 F. Supp. 4116 (E.D.N.Y., 1973); *affirmed*, 500 F. 2d 925 (2d. Cir. 1974).

3.5 The Use of Affirmative Litigation

In bringing civil rights actions against corrections departments, or otherwise challenging basic correctional law or practices, attorneys are helping to bring about a massive change in the status of all prison inmates in the country. The relationship of these "law reform" or "prisoners' rights" organizations and paralegals is illustrated in two examples.

In New York, the Legal Aid Society's Prisoners' Rights unit has little contact with the "Prison Legal Assistants" who attend to the needs of detained or sentenced clients in the city jails. While there may be some informal feedback from the paralegals to the Prisoners' Rights staff about major problems, that contact is sporadic, and the Prisoners' Rights lawyers effectively have no paralegals to help them in the field, that is, in the city's jails. Yet that is not where their major concerns lie. In challenging the basic policies of the correctional administration, their need is less for individual case material than for evidence of widespread practices and policies, much of which can be documented only through a laborious process of examining thousands of judicial files and the like. To help in this data collection effort, the Legal Aid Society has employed staff members of "Operation Wildcat," a so-called "sheltered workshop" for former narcotics addicts.

The Prisoners' Rights Project in Massachusetts has two units, one dealing with affirmative litigation and the other with legislative and administrative matters, both of which are designed to alter laws, policies, and procedures as they affect their clients as a class. Both units are headed by attorneys, but the bulk of the work is performed by law students functioning very much in the traditional role of a law clerk. Nonetheless, both units receive a considerable amount of information and occasional direct help from the paralegal staff which works more directly with inmates. In comparison with the New York program, the informal connection between the prisoners' rights staff and the case-oriented paralegal staff is far more extensive, and reportedly, adds to the knowledge, understanding, and efficiency of the two prisoners' rights units in the Massachusetts program.

Yet the impression one gets from both of these programs is that a "law reform" project, standing alone, would not need the services of any paralegals as we have defined them, although its need for law student clerks, investigators, and data collectors is very high indeed.

CHAPTER 4. PLANNING TO USE PARALEGALS

4.1 Introduction

Virtually every program administrator considering using paralegals has specific office improvement in mind. There is generally no better starting point than an immediate set of problems to cope with, necessity being the mother of many a sound, pragmatic invention. But be cautious: it is also the progenitor of many expensive, wasteful, ill-conceived psuedo-solutions.

A recent newspaper article illustrates the point. By way of background, the Washington, D.C. Public Defender Service has successfully litigated a class action suit brought against the Department of Corrections over the administration of the D.C. jail. Unfortunately, circumstances keep fouling up the solution ordered by the court, a key feature of which is an order to abate the jail's endemic overcrowding. Every time the Department complies through pragmatic adjustments, it seems that other parts of the system end up ordering still more men into the jail, which houses pre-trial detainees, sentenced misdemeanants, and convicted felons awaiting sentence. Overcrowding reappears, and PDS attorneys reappear in court to once again seek to vindicate the rights of the class they represent. Here's what happened in a recent hearing:

> [Judge] Bryant expressed his displeasure at the department's handling of the jail situation, emphasizing his words slowly at one point: 'They [the inmates] just can't be kept that way. You just can't do it.'
>
> City officials protested, as they have in the past, that numerous high-level planning sessions have produced no substantial way of relieving the overcrowding that forces them to keep more than 800 inmates in a 608-capacity jail. However, at one point in the hearing, Bryant's own courtroom clerk, Sophie Lyman, suggested a procedure for speedy transfer of convicted inmates to Lorton. Corrections officials conceded her suggestion would probably allow them to transfer more than 100 inmates, who are presently kept in the city jail, to the Lorton complex in Virginia.
>
> When [Corrections Official] Rodgers said the department didn't keep such records, Mrs. Lyman showed the judge the form by which prisoners are committed to the jail after court appearances. She suggested the jail would know the status of the prisoner if the court personnel merely wrote on the form that the inmate had been convicted and was awaiting sentence.[40]

It takes little imagination to conjur up alternative remedies the parties to this dispute could have devised absent the solution suggested by the court clerk. It is entirely possible that these could have involved the reallocation of existing staff to be used in a para judicial or paralegal manner (by monitoring the jail populations, contesting specific actions and decisions of the corrections department, or even putting the whole institution into a kind of receivership). It may in time come to that, and a good deal more.[41] But in this case, as in others, a proposed paralegal (or parajudicial) solution to the immediate problem should be subjected to careful scrutiny before it is acted on.

If, in the course of reviewing this manual, program administrators see opportunities for innovation not forced on them by the press of day-to-day problems, by all means pursue these ideas, but not in simple isolation. Repeatedly, projects hire a paralegal to perform a single function, and

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[40] *The Washington Post*, August 8, 1975, pp. C-1,2.

[41] In a subsequent hearing, in which Judge Bryant found that the city was still out of compliance with his earlier order, he ordered the city government to appoint a high-level official to serve as a "compliance officer" to devise and administer the required changes. *The Washington Post*, November 6, 1975, p. A-1.

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all too often one later finds that paralegal's job entails, for example, an enormous crush of responsible work in the morning and a very modest dose of essentially clerical work in the afternoon. That partial solution deserves to be avoided as much as the pseudo-solutions patched together in a process of crisis management. A sense that paralegals are beneficial to defenders and inmate legal services programs needs translation into a well-conceived plan. A recommended approach follows and is directed to the "administrator" of a defender office or inmate legal services program (who may or may not be the director). Although the language speaks mainly to the needs of public defenders, its application to inmate legal services programs should be apparent.

4.2 Conducting an Inventory of Desired Office Improvements

To determine how best to explore opportunities for change, it is often useful to review the operations of the office and establish a priority ranking of areas that could stand improvement. That methodical review will often uncover helpful insights if line staff are consulted in the process.

In responding to the revealed problems and the unmet services of the office, common sense tells us that the least complicated, least expensive solution is to be preferred. The following questions suggest an appropriate rank-ordering of priorities:

- Will changes in work practices suffice? Or can the problem be solved by using a new form, or an automatic typewriter, or some other work-saving procedure or tool?
- Can existing staff perform the job? If so, what is the lowest level of staff — clerical, paralegal or professional — to which the work can be entrusted? Could that estimation be lowered even more if the new position is buttressed with special efforts at training and supervision?

The essence of this recommended approach is forethought. And if the decision is finally made to use paralegals, we encourage a series of further steps to implement that decision. Just as the careful preparation of a will or a contract can prevent serious difficulties later on, so the investment of time in designing the paralegal role well in advance of the paralegal's recruitment can yield pleasing benefits. The suggested guidelines that follow categorize issues that deserve attention.

4.3 Suggested Guidelines in Preparing for the Paralegal

4.31 Developing a Job Description

The draft of a job description lays open to scrutiny and reflection the decision-maker's estimate of what work can be delegated to a paralegal, what skills are needed to do it, and how it will improve the workings of the office. The capsule job descriptions provided earlier in the manual are designed to form a useful starting place in this process.

A recommended method is to use the "dirty hands" method of perfecting the job description—in other words, have the person who will be supervising the paralegal actually do the paralegal's job on a test basis. A well-framed job description helps to win support for the new position, and the supervisor who perfects it through a test run in this fashion is in a particularly advantageous position to select, train, and monitor the paralegal who fills that role. Although this process will give life and substance to the job description, the paralegal himself can be expected to flesh it out even more.

4.32 Using Current Resources to Pay for the Paralegal

It is sometimes possible to "cover" paralegal costs from existing resources. For example, by centralizing all the office typing services and by using automatic typewriters and more forms, the Seattle Prosecuting Attorney's Office found that it only needed half of its secretarial force working on purely typing assignments. The other half became paralegals. Although we uncovered no defender/corrections analogue to this experience, it still seems reasonable to advise administrators of such programs to make a close examination of what current staff members are doing, with an eye towards devising a reorganization of the office so that certain individuals can be freed up to take on paralegal assignments.

A less dramatic way of meeting the same objectives is simply to augment the responsibilities of one or more staff members. It is not uncommon, for example, to find a secretary — not a new paralegal — performing client eligibility screening for an hour or two every day.

It must be said, however, that exploring the no-additional-staff option necessitates dealing with two issues. First, if the aim is to augment the duties of staff who maintain most of their current job functions, a careful assessment of the time involved in the new paralegal functions should be made to insure that the delegation is feasible. Second, one must be sensitive to reactions to this change. Even when resentment to such shifts of responsibilities is not voiced, one can sometimes see it manifested in staff morale or turnover. A useful method of counteracting resentment is to involve the staff member in planning the change. If he can visualize the larger benefits of the changeover and is a principal designer of the duties involved, he is much more apt to take pride in his increased responsibility — especially if it does not entail an unfair increase in his workload.

4.33 Finding New Resources to Pay for the Paralegal

The list below categorizes the kinds of new resources which administrators have successfully tapped to hire new paralegals. But before they line up to get their share, administrators should keep a few sobering facts in mind.

First, neither defender programs nor those serving correctional inmates rank high on the public's list of priorities. Obtaining funds for improvement in these agencies is always a very difficult chore.

Second, the administrator must plan to spend a considerable amount of time devising and shepherding any funding proposal. And he must do so in the knowledge that his efforts may come to naught.

Third, even successful attempts at finding supplementary funds will likely produce only "soft" support of limited duration. The administrator's job at persuading his regular, permanent funding authority to eventually pay for the increment begins in earnest once the soft grant is awarded. Failure to take that job seriously has led to administrative anguish time and again.

Yet, for all these forbidding hurdles, at least some administrators have perservered and won, and the roster of successful grantsman in this field grows longer every year. Moreover, administrators can usually calculate whether their realistic prospects justify a major commitment of time by making some informal soundings with such potential funding agencies as are listed below early in the grant-seeking process.

- *Regular Budget Authority*. The public defender's budget authority — the city council, state legislature, or whatever — is the most obvious place to seek additional funds. Public defenders have found that accompanying that request with statistics and documentation is often persuasive. Among the more effective supporting arguments that have been used to justify the request are the additional manpower sought is in lieu of additional lawyers; the paralegal(s) will enable attorneys to do more court work; additional paralegal resources devoted to placing defendants and offenders in more appropriate, community-based programs and services is far more likely to have a rehabilitative effect on them than either institutional or community placements lacking those special services. (If these recommendations to a hypothetical public defender are wholly inappropriate to the needs of a given inmate legal services program, then the latter is probably operating on year-to-year grants, an ideosyncratic situation for which general advice is of little benefit.)
- *Government Manpower Programs*. Government-subsidized manpower programs can be tapped, both for training and, on occasion, for stipends or salaries. Note that this can have a domino effect in the office: a youngster hired under the Neighborhood Youth Corps program, for example, can work at the office copier and take over other clerical duties permitting one or more secretaries to take on paralegal assignments.
- *Students and Other Free Labor*. Volunteers and students working for course credit are an obvious source of free labor. (The true costs of this "free" labor are discussed later.) Note that the student need not be in law school: an undergraduate majoring in criminal justice, for example, may be a potential student intern. Other academic areas where one might find interested students are political science, public administration, social work, sociology, and psychology.
- *Loaned Staff*. Other agencies might be persuaded to detail some of their staff to the public defender. For example, staff screening clients for a diversion agency might well do some initial identification of clients needing help with bail problems.
- *Private Funding*. Legal aid societies have long enjoyed financial support from local bar associations, United Fund, and foundations. No more need be said.
- *LEAA Grants*. The Law Enforcement Assistance Administration in the U.S. Department of Justice supports improvements in the na-

tion's criminal justice system. Most of its funds are spent through "State Planning Agencies." SPA staff should be contacted about applying for fiscal help from that quarter. They may also be helpful in preparing applications for one of LEAA's nationally administered programs, the "Discretionary" program and the National Institute of Law Enforcement and Criminal justice. Discretionary funds are used mainly to support innovative projects of national interest or scope, while the Institute supports basic and applied research, and evaluation projects.

A special word about the funding of inmate legal services programs is in order. Most of the projects described in Chapter 3 have obtained at least temporary funding from LEAA. All of these are having difficulty in generating permanent budgetary allocations to support the programs on a continuing basis. Some impetus for local correctional funding may come from the courts, which have been generally unsympathetic to the pleas of correctional agencies that they do not have sufficient resources to provide properly for constitutional rights of inmates. Without such an impetus, however, it is necessary to convince administrators that the legal needs of inmates are fundamentally important to the goals of their correctional programs. This is an argument to which most administrators are becoming increasingly sensitive.

4.34 Thinking About a Training Program for Paralegals

The untrained paralegal is an unguided missile. Working in areas of major sensitivity, he is capable of causing serious injury to a case or to the reputation of the office. The fault must certainly be shared by the office in that unfortunate situation. The potential for error can be significantly reduced by a good training program.

A good rule in job training is to think it through and write it down beforehand. Even if the office plans to train only one paralegal, designing at least a training outline is worth it: that paralegal will not be there forever, and not only is there his replacement to consider but there is the possibility that he will be joined by other paralegals in the future. And, most importantly, the solo paralegal who has been afforded a well-conceived program of training is a far more valuable asset than a haphazardly trained one.

Another good procedure is to have every new trainee write down, every day, the problems he encountered and how he learned to overcome them. If this is done, the office will find that its training design becomes amplified into a book of procedures for the paralegal. Among other things, that book becomes a much-improved training resource the second time around (which gets further refined in the third go-round, and so on). And while it is being produced, during the paralegal's first weeks on the job, it serves as an excellent aid to the supervisor who is helping the paralegal learn the job properly.

Finally, any program that uses paralegals to help provide legal services for inmates should consider the employment of ex-offenders, a suggestion which also applies to many defender paralegal roles. Obviously, the recruitment of an ex-offender demands special care in selection, but if the choice is made carefully, it pays immediate dividends in terms of training. The ex-offender has an invaluable insight into the needs and interests of the client population and that insight can be a training asset of major importance for everybody else involved in the program.

There are three categories of training to be considered: orientation to the job, on-the-job training (in which the paralegal learns from actually doing the work, but under close supervision), and in-service training, to upgrade the skills of present staff.

The reader will note that Chapter 5 is devoted to the paralegal's training. But it must be stressed that training is at least as much an issue of *planning* as it is an issue of finding the time to work with the new worker. Good vocational training, just like good academic teaching, involves much more time in preparation than in delivery.

4.35 Assessing the Results of the Paralegal's Work

The right time to figure out how to measure the value of the new paralegal is before he goes to work, not after. By thinking out every way that the supposed benefits of the job can be measured —preferably in numerical terms — the planner not only has a device for getting feedback on the paralegal's work, but he implicitly establishes goals for the paralegal that will have a useful influence on all his other planning work, from creating the job descriptions to design of the training program.

Another reason for designing this evaluation system early is that it can be installed a month or more before the paralegal starts, thereby enabling the office to have comparative statistics, for its own purposes and for budget or funding authorities, on whether the role makes a difference. Thus, if a paralegal working in the bail area is expected to increase the proportion of defendants who are released prior to trial, it is helpful to know the rate of pre-trial release both before and after the aide goes on the job. The same is obviously true of, say, a substitute counsel seeking to reduce the number of disciplinary charges brought against inmates, or to increase the proportion of inmates who are exonerated in disciplinary hearings.

The administrator may also want a "process" evaluation, which is an analysis of the changes introduced into the office with the addition of the paralegal. A good starting point for this is the "office inventory" we discussed earlier in this chapter.

As with other management reforms in his office, the administrator may want not only to measure the benefits of the change but also to insure that the public learns about and appreciates the reforms. Accordingly, he may want to convene a group of citizens from outside the office periodically to examine and report on the paralegal program. In line with this, the program director may also want to generate media coverage of the program, which, incidentally, will have a healthy impact on the paralegals' own perceptions of their value to the office.

One final aspect of assessing the paralegals' performance bears repeated mentioning: not all staff work out well in a given role. The supervisors should be prepared to monitor the work of a paralegal whose performance seems unsatisfactory, document that fact, and take appropriate action: place the paralegal on probation, or reassign him, or, after following fair procedures, dismiss him. That practice should be applied even-handedly to all staff and should not be modified so as to treat some staff more leniently. Specifically, we do not recommend different personnel policies in respect to paralegals who are also ex-offenders. For all the special talents such people can bring to many paralegal jobs, they must understand clearly that they are not clients but staff of the agency — an agency with a high ethical responsibility to their clients. If any staff member is unable to meet that obligation, or, put another way, needs a more sheltered work environment, the paralegal should make arrangements to find it elsewhere.

4.36 Dealing with Civil Service

If the proposed paralegal role is to be covered under the locality's civil service system, this will necessitate some planning. Since the kinds of jobs found in a public defender's office tend to remain constant over the years — attorney, secretary, investigator, law clerk — the office may have very little experience in developing a new classification with civil service. And for its part, the civil service agency may never have heard of a job that looks like that of a paralegal. It is, after all, a new kind of job throughout the legal profession.

One option in dealing with the problem is to perform a creative, updated interpretation of an existing role. For example, lawyers have long defined a good legal secretary as a paralegal who can also type — only they haven't used that terminology. Obviously, this option is available only if the legal secretary's pay scale is the same as is proposed for the new paralegal. Whether or not this updating of an existing classification needs formal clearance by the civil service agency depends on local practice.

The other option is to develop an altogether new classification — or, better yet, a new series of roles, thereby establishing a career ladder from the outset. The written job descriptions should be helpful as working models in these discussions with the civil service staff. But prudence dictates that the discussions with the civil service agency should start at the earliest possible date, since they may take some time to reach a conclusion. The first draft of the paralegal's job description can serve as a concrete proposal with which to open those discussions. Note that one exemplary set of paralegal job series, that promulgated by the U.S. Civil Service Commission and reproduced in Appendix D, took well over a year to draw up and issue.

4.37 Preparing the Lawyers to Be Supervisors

Since the attorneys are usually thought to be the direct (and grateful) beneficiaries of any new paralegals brought on the staff, rarely do planners or administrators think to train the lawyers in how to use the incoming paralegals. Thus, in every kind of law office which has introduced paralegals in recent years, the experience has been much the same: perhaps a third of the lawyers take to the idea wholeheartedly, while another third are mildly supportive, with the remainder showing continuing resistence to the newcomers.

There is far more office disruption in this pattern than is necessary. Perhaps it would be undesirable (as well as impossible) to obtain uniform treatment of the paralegals by every attorney having access to their services. But that is not the issue. The planner can at least educate the attorneys on what the paralegals are expected to do and how they are expected to do it. Then, whenever an attorney declines to delegate one or more tasks to a paralegal, he will do so explicitly. That has three virtues.

First, those tasks in the paralegal job description which some attorneys will not delegate to the paralegals become explicitly sensitive in nature — and appropriate safeguards can be constructed to insure that, when delegated, these tasks are done properly.

Second, for those attorneys whose refusal to delegate certain tasks is based on honest doubts about the paralegal's competence, a careful monitoring system can show when these doubts are factually groundless. In this situation, some of the skeptical attorneys may eventually change their minds. But it should be recognized that some resistence will really be based on temperament and the attorney's style of practice. Here, the planner (and the paralegals) should not expect to make many converts, at least not quickly.

Third, and perhaps most important, the inevitable disagreements caused by any change such as this will be brought out in the open, where reasonable differences can be more reasonably dealt with. Alternative methods of introducing change have all too often led to misunderstandings and needless stress.

The attorneys' education as to the expected paralegal role or roles can be delivered in 2 to 4 half-hour staff meetings. But there is another issue that should be handled simultaneously and given equal weight. That is the price the lawyers must pay to obtain paralegal assistance: the application of continuing, conscientious supervision.

"Supervision" is an imprecise concept. In the lawyer-paralegal relationship, supervision partakes of the attorney's ethical obligation to the bar and his clients to vouch for the quality and prioriety of his agent's work. But, as a practical matter, such admonitions are not themselves sufficient: the lawyer is likely to have little experience by which this precept is translated into day-to-day activities.

Thus the planner should construct a recommended system that standardizes the manner in which paralegals receive assignments and are to report back to their supervisors. There should be explicit guidelines as to what the paralegals may do on their own and what requires explicit instructions from the attorney. Similarly, recommended stopping points, when the paralegal checks back with the attorney before proceeding on a given assignment, should be structured into the supervisory relationship.

Further, the planner can suggest the use of a tickler system, so that expectations as to when assignments are due can be established and met.

Beyond these, there is a presumptive need to have the supervisor set aside a period of time each day, or at least each week, during which he and the paralegal can discuss the paralegal's assignments in an informal manner. This is more than a quality control device: it is an opportunity for both the attorney and the paralegal to reflect on their mutual endeavors and to become more resourceful and imaginative in their work.

All of these elements of supervision add up to a significant block of time devoted to attorney paralegal communication, much of it of a somewhat formal nature. That feature of the proposed change will not look attractive to any of the attorneys, whatever their opinions of the paralegal idea may otherwise be. But presenting the supervision issue in this light and offering concrete methods of carrying out the supervisory responsibility are both highly recommended. Experience indicates that it is not only easier to later liberalize a close supervisory structure than to tighten up a loose one, but that the true cost of the former approach, measured in terms of time, stress, mistakes, and morale, is far smaller for the attorney who is prepared to set aside, say, 4 or 5 hours every week for this purpose than for his colleague whose approach is on a casual, "when-available" basis.

The problems underlying this advice are to be found wherever lawyers work with paralegals. But those problems are magnified considerably in inmate legal services programs. Here, paralegals often work miles away from supervising attorneys, and often on informal, intra-institutional matters in which there are few logical checkpoints at which the paralegal should consult with his supervisor. Establishing a conscientious supervisory system is particularly troublesome under these circumstances, since, absent such a system, the paralegal's instinct is to seek an excessive amount of consultation with his supervisor. At least one of the larger programs (in Boston) is developing methods to overcome these problems. First, the program is developing cadres of specialists who, after extensive on-the-job training, may be entrusted to handle many matters within their range of competence without continuous discussions with attorneys. Second, the program is reducing its use of paralegals as "lawyers' assistants" in major cases which have gone to litigation; only those paralegals who are also law students will help fashion the litigation strategy with the attorneys of record. And, third, the program intends to appoint one full-time attorney as the immediate supervisor of all the non-law student paralegals.

This evolving model illustrates the point that how one designs a supervisory structure — and trains the lawyers and paralegals in its use — is a planning and administrative issue of considerable magnitude, and one that requires attention.

4.4 Recruitment

Whether to promote a current staff member to the new position or bring in a new recruit is a typical threshold question facing the administrator once the paralegal position is open. We offer no formula answers to such questions.

Instead, we have sought to array a range of manpower pools which directors of publicly supported law firms have tapped to recruit paralegals, and to indicate some of the generalized advantages and disadvantages they have reported with each pool or group. As an aid to the reader, we have divided these discussions along one particularly important line of decision — whether to promote internally or to recruit from the outside. Before turning to the recruitment issue, however, we should start with how to articulate the personal qualifications thought appropriate for the new job.

4.41 Determining the Appropriate Qualifications for Those Applying for New Positions

A. *Flexible qualifications.* Many civil service systems have developed flexible qualification standards in recent years, permitting, for example, the substitution of relevant work experience for educational requirements. The same approach is recommended for establishing eligibility criteria in non-civil service jobs.

B. *Minimum qualifications and desirable attributes.* To the degree possible, it is helpful to establish a set of both minimum qualifications and desirable attributes tailored to each position. Examples of the latter might be "a capacity to counsel people under stress," etc. It is particularly useful to articulate these latter qualities (which often involve a mix of both temperament and skills) so that the office has consistent and relevant guidelines when weighing competitors who meet minimum qualification standards. An experienced paralegal in the Portland, Oregon, public defender's office cited the following as important skills and attributes needed for her work:

- Stamina and a sense of humor — people have to learn how to take a break and laugh.
- A capacity to work long hours.
- Patience in regard to client excuses and stories.
- Ego strength so they won't be manipulated by the clients.

C. *Entry-level qualifications.* We did not recommend specific entry-level qualifications for the paralegal jobs discussed in Chapters 2 and 3. To do so would have been either to talk in generalities which belabor the obvious or to propound specifics which are vulnerable to abuse. But in any event, the most useful guidance one can obtain in establishing position qualifications for a new role is the very process of defining the job and testing it out. At that stage, common experience plus an appreciation of the range of recruitment sources available to the office are normally sufficient to establish a fair and beneficial set of eligibility criteria.

D. *"Declining" requirements for a paralegal job.* We should report on one interesting and somewhat problematic phenomenon we encountered in both defender and prosecutor offices. Frequently, administrators have hired law students or relatively young college graduates to fill newly created paralegal roles. In a number of instances, these paralegals have taken a very creative hand in refining and perfecting the job and have effectively functioned as both operational staff and as planners. Yet there is an obvious limit to how much planning can go into a given role. Paradoxically, it seems that the better the paralegal is as a planner, the better he is at systematizing his job and thus making it a position that could be filled by someone with far less education and fewer skills. Although this situation presented problems for a number of law student paralegals we observed, it was encouraging that the "traditional" way in which students have been misused — and given a surfeit of clerical and messenger jobs — was nowhere in evidence in the offices visited.

E. *A word on academic credentials.* While academic credentials give some indication of a person's skills and interests and are relatively easy to assess, there are other salient indicators to uncover the talent to perform a given job — like temperament, degree of interest, general intelligence, and skills acquired in other kinds of work.

This is not to disparage academic achievement, only to discourage total reliance on it. Often, a liberal arts education teaches its graduates a very special skill — how to learn — which is a significant asset in new paralegals. And technical and professional educations are increasingly geared to the real needs of the marketplace. The lists of institutions in Appendix E, which offer paralegal training may, in some instances, actually lead administrators to teachers and students who are already prepared to implement creative solutions to specific problems. But that will be the exception; neither academic achievement in general, nor institutional paralegal training specifically, is so reliable an indicator of talent and skill that an administrator should exclude candidates lacking, say, a BA degree or a certificate from a training program.

4.42 Considering Current Staff

A. *The "traditional" non-lawyers:*

- *Secretaries and investigators.* Secretaries and investigators are frequently tapped for new paralegal jobs. They represent the most natural source of recruits.
- *Law clerks.* Sometimes the candidate selected has been a law clerk — that is, a law student formerly squirreled away in the law library churning out drafts of legal memoranda, briefs, and motions.
- *Existing paralegals.* Already-experienced paralegals due for rotation or advancement are often considered.

  (Note: in this section, we are discussing the promotion of current staff into a new full-time paralegal position. For a discussion of simply augmenting the responsibilities of current staff by adding paralegal functions to their regular duties, see Using Current Resources to Pay for the Paralegal in paragraph 4.32.)

B. *The advantages of recruiting from within*

- *A known quantity.* The applicant's work habits, his knowledge and skills, as well as his limitations, are known quantities. Often one cannot obtain as good an assessment of others.
- *Career mobility.* To recruit from within is to create a "career lattice" for staff who might otherwise be stuck in the same job indefinitely. Note the use of the term "career lattice": many workers have volunteered to move laterally into a paralegal role, without change in salary, simply as a change of pace. Obviously, if the lateral move also opens up new opportunities for upward advancement, the worker is all the more motivated to make the switch. That possibility of future promotion is especially attractive to secretaries and other staff members who see their current jobs as dead-end ones. It is also worth considering that when one staff member gets a new kind of job in the office, it is possible — if by no means certain — that other staff will be pleased that their career opportunities have also, by inference, been broadened.
- *Affirmative action.* The opening often affords the office an opportunity to improve its equal employment practices by promoting women or minority staff members. For a suggested career lattice, see Appendix C.

C. *Possible disadvantages of recruiting from within:*

- *Staff resentment.* Not everyone wins when one staff member is promoted — whether or not that promotion involves a salary increase — and some staff resentment of the change is common.
- Also, when some workers are switched to new paralegal jobs without additional pay, they resist, however silently. As a matter of principle, advancement to higher responsibilities should carry with it an increase in pay. However, this principle cannot always be honored.
- One way to help avoid covert resentments in this situation is first to involve all the non-lawyer staff in an informal training program, helping them better understand how their work contributes to the whole office function.
- Another is the "take-a-secretary-to-trial" approach, which often promotes widespread staff receptivity to more, and more responsible, assignments, mainly because the purpose

of their work becomes more coherent and they enjoy it more. Incidentally, it is not just secretaries who deserve time off to see the products of their labors in criminal courts and administrative hearings. Many investigators, law students, and paralegals are offered suprisingly few opportunities to witness how their contributions affect the legal adversary process.

Lack of talent. It may well be that no one among the current staff has the knowledge, skill, or experience to move up to the paralegal position. Or it may be that present staff members are irreplaceable in their current roles.

D. *Dealing with the job title issue.* Job titles are status symbols in even the smallest offices. The new job is likely to develop a new title, and this may add to the feelings of resentment among the staff.

One way of avoiding that issue is simply to expropriate an already-existing title: one finds the most astonishing variety of job functions performed in law offices under the heading of "Investigator."

Another technique is a complete reform of titles and/or career ladders in the office. Thus, one may institute a new series of job descriptions concerned with clerical and administrative work (e.g., clerk, clerk-typist, secretary, legal secretary, and administrative assistant) which party overlaps with the new job series (e.g., legal assistant intern, legal assistant, and senior legal assistant).

The classification of titles in this manner connotes a fair and rational progression, and, in this hypothetical example, some of the sting is taken out if the staff understands that to move from the administrative series to the paralegal series, a "legal secretary" has to first move laterally, without a salary raise, into the "legal assistant intern" slot.

4.43 Considering Recruitment from Outside the Office

A. *Advantages.* The primary reason for going outside the office is that the job may entail special skills or attributes not found among current staff. For example:

- An experienced social service worker might more effectively recruit community agencies to provide both pretrial and post-conviction services to clients.
- An ex-offender might more efficiently locate elusive clients or witnesses.

Other important advantages of an outside recruit include these:

- *Value of new habits.* The recruit's lack of experience in the office may free him from office shibboleths and counter-productive work habits.
- *Value of new insight.* His lack of immediate bonds of loyalty to the current staff may afford him an opportunity for insightfulness, which even they may find refreshing.
- *Testing potential.* The job may be better formulated in the long run if it is first tested out by someone like a law student who expects to stay only 6 months or a year, whereupon the job can be institutionalized and taken over by a career employee.

B. *Disadvantages.*

- *Risk of the unknown.* One can obtain only an approximate understanding of the candidate's real qualifications for the job, and thus risk of poor selection is greater.
- *Need for orientation.* The new staff member may well be unfamiliar with the office or the larger system in which it operates, necessitating a protracted period of orientation.
- *Relationship with current staff.* The new staffer may receive less than the full cooperation of the current staff.

C. *Forging relationships with the current staff.* The new paralegal's integration into the workings of the office will go more quickly and smoothly if his role is understood by everyone from the outset. This argues for soliciting staff reactions and suggestions at an early stage, when the job description is being formulated.

To the degree that the paralegal will have to work with other non-lawyers, they should be brought into his initial orientation and on-the-job training. Teaching is an effective way to learn — the more "teachers" the paralegal has from among the experienced staff, the more staff members will come to understand and support his function in the office.

4.44 Considering the Labor Market

A. *Introduction.* A complete review of the labor market as it pertains to recruiting paralegals is hardly feasible in a manual of this nature. The following review of what some administrators have found to be significant insights about the labor market may, however, prove useful.

B. *College graduates.* As was indicated in another section of this chapter, many paralegals recruited for defender offices are either recent college graduates or law students. As we also have reported, this has had mixed results: often such paralegals are especially creative in better defining the new job, but interest in the work frequently wanes once that creative challenge is gone.

A lesson to be drawn from this is that such recruits may have some "planned obsolescence" built into them. If the administrator is aware of that, he can usually work around it; some jobs, after all, put a far smaller premium on staff continuity than others.

C. *Full-time and part-time law students.* While the comments made above also apply to law students, their situation is a special one, because the law student paralegal is implicitly or explicitly a potential recruit as a future staff lawyer in the program. This "internship' relationship is common, and both the public defender and the law student paralegals are generally pleased with it. Not incidentally, the nature of this relationship promotes high motivation among these workers.

Interestingly enough, few if any of the paralegal jobs we observed which were filled by law students necessitated formal legal education. The benefits of knowing the language of the law and a number of its precepts were marginal and by no means essential prerequisites to adequate job performance. In fact, almost every paralegal job we have ever observed law students performing, we have also seen performed by competent, non-law student paralegals.

The principal disadvantage to using law students is that there is a lack of continuity built into this group of paralegals. Many work only part-time and almost all take time off during exam periods. Such interns are much more likely to be on the staff for the three months of summer than for a year or two or three. And, from the law student's perspective, circumstances that keep him a paralegal rather than an apprentice lawyer are often very frustrating. Curiously, there is little concern evidenced in defender offices — with some notable exceptions — about the hidden costs inherent in hiring such a transient work force.

These problems are sometimes exacerbated when the law students are recruited through a clinical program and are working for course credit. Although most such students actually represent clients in formal proceedings — and are thus not true paralegals — administrators often have problems with the others who do serve as paralegals. The consistently reported reason for this is that the agency has virtually no role in the selection process and relatively little leverage in maintaining work performance standards.

D. *Graduates of paralegal education programs.* The growth of the paralegal field has led to scores of educational and training programs in this speciality. Two lists of institutions offering such programs are included in appendix E. One finds that there are basically two kinds of training programs available. The largest are found in junior and community colleges which typically award a 2-year, Associate of Arts degree in paralegal studies. While a few colleges have a baccalaureate-level major in this field, most of the other programs are relatively short, intensive training programs at universities and private training schools, aimed mostly at those who already have a BA degree.

Although few of these institutions offer more than a course or two on criminal justice topics, many have courses in civil litigation. Moreover, graduates of all these programs have both a general background in the legal system and a manifestly serious interest in a paralegal career. As against other college graduates, the ones with the additional training in paralegal work seem to be attractive candidates. And the junior college graduate may be an especially good recruit to fill jobs that have been tested out and stabilized by paralegals with a more extensive educational background.

E. *Candidates seeking second careers.* Many private attorneys have made a special effort to recruit women looking to make a second or third career after their children have reached school age. And many defender offices with units concerned with community programs for defendants and convicted offenders have recruited experienced probation officers or social workers for such roles. All defender and inmates legal services programs we have surveyed have at least given careful consideration to candidates seeking an alternative to a former career in crime.

F. *College and high school students.* The younger and less experienced the worker, the more likely he is to present the office with problems of supervision and reliability. Yet because some offices have found they can recruit students at no cost in salary, they have done so. And at least some have done so successfully.

The apparent key to success is to not regard these students as "free" labor. The office must be willing to invest time in them, first, in locating jobs that are interesting and useful, and second, in providing supervision.

G. *Part-time volunteers.* The problems associated with using part-time volunteers are significant. Unlike the student who receives a stipend or course credit for his labors, and thus operates under a sense of accountability to the office, the volunteer provides free services as a favor to the office. In many cases, this arrangement tends to work at the convenience of the volunteer — which, it often turns out, is highly inconvenient to the office. Moreover, for all the good community relations involved in using volunteers, it takes considerable effort to recruit volunteers.

An initial investment in orientation and training, however, often helps to alleviate these problems, as does the establishment of clear lines of supervision and a regular schedule which the volunteer is expected to follow. These serve to educate the volunteer as to the fair expectations the office places on him. These procedures work particularly well if volunteers are used primarily in one distinct capacity, such as helping to get detained defendants released before trial.

A more formalized arrangement that has been used in other areas where volunteers work is the use of written contracts between the agency and each volunteer. The very formality of stating what the agency will do to support the volunteer, and in return, what the volunteer is committing to the job, is an effective device for investing a sense of high purpose to the relationship, for establishing and maintaining a high level of reliability and productiveness from the volunteers, and for establishing clearly understood grounds for terminating the relationship when the volunteer does not meet the contract's expectations.

H. *Full-time volunteers.* The defender office having the highest known proportion of paralegals — the Metropolitan Public Defender in Portland, Oregon — achieved its quantum leap through the employment of four young college graduates who had signed up as Jesuit Volunteer Corps workers for a year and were assigned to that office. The breadth of their responsibilities is described in Chapter 2. Three findings are significant here: they became highly regarded "Trial Assistants" by the attorneys of the office; they and the lawyers worked hard at institutionalizing the role, through the design of a training manual and other means; and they and the attorneys had considerable trepidation about bringing in a completely new cadre of volunteers every year to fill their positions. Although the financial cost to the office is only $2,500 per volunteer a year (considerably less than comparable VISTA workers), the prospects of paying the intangible annual costs involved in this amount of turnover motivated the director to get some of these positions made part of his permanent work force. As a matter of fact, his first corps of volunteers became, 1 year later, his first corps of paid paralegal staff. The Portland experience commends itself to repetition elsewhere on a first-year, experimental basis, and volunteers would no doubt be a continuing asset to offices which already had a group of regular paralegals who could assist in training and supervising this supplementary group of workers — again, just as has happened in Portland.

I. *Handicapped workers.* Many paralegal jobs are "desk-bound," which is an unappealing feature to many potential workers. That is typically not the case, however, among those with physical disabilities which limit their mobility.

Other jobs can similarly be tailored to the strengths of handicapped workers. For example, deaf people have capacities for sustained concentration which often makes them excellent typists and keypunch operators in busy offices.

In addition, workers with disabilities which make them unsuitable as paralegals can help to free up others to do paralegal work. In medium and larger offices, secretaries often spend a considerable amount of time at the office copying machine — time which could be more productively spent if someone were hired to handle all the copying chores. This is an excellent role for people with learning disabilities who get job satisfaction in doing routine, repetitive work.

CHAPTER 5. TRAINING NEW PARALEGALS

5.1 Initial Considerations

5.11 Selecting the Trainer(s)

An obvious possible trainer for the new paralegal is his immediate supervisor. If that is not feasible, the staff member who put together the job description and tested it out is a reasonable substitute — as is the already-experienced attorney or paralegal whom the new staff member will be replacing.

5.12 Preparing for Training

The basic, recommended steps for preparing the training program were covered in the previous chapter, since training is very much a planning matter. In summary, the key recommendations are:

- Prepare, scrutinize, and test out the paralegal's job description.
- Write down, or at least outline, the training plan.
- Have the new paralegal write down daily what he found difficult to do or confusing, or what he learned. Use these notes as discussion guides for the supervisor and as materials to improve the training outline for future paralegals.

5.2 Designing and Giving the Orientation Program

5.21 Importance of Orientation.

When workers understand the larger system of which they are a part, they often perform better and enjoy their work more. An orientation to the overall workings of the office and of the criminal justice system it serves is very desirable. Among other things, it helps to instill in the paralegal a sense of the ethical obligations of the legal profession which he too should be expected to follow. Incidentally, even when the trainee has been recruited from the current secretarial or investigative staff, it is prudent to run through the orientation with him anyway. As has already been mentioned, a number of attorneys report that giving secretaries an opportunity to observe trial proceedings has a very beneficial impact on their interest in the job and their productivity — regardless of whether or not the secretaries were being trained to assume new responsibilities.

5.22 Checklist of Topics for Orientation

The following is a sample checklist of topics to be covered in orientating the new defender paralegal to his work:

- Legal ethics and the unauthorized practice of law.
- An overview of the criminal justice system.
- A tour of the police station, jail, prison and courts.
- A walk-through of the processing of typical cases.
- A tour of the defender's office, indicating its overall goals, the purposes of its subcomponents, and staff of those units.
- An introduction to the paralegal's job, covering the general office duties entailed, the job's special responsibilities, its relationship to other office procedures, and responsibilities of the paralegal in dealing with the public.

Projects concerned exclusively with inmate legal services would be well advised to conduct a similar orientation. Given the isolation of the correctional setting, it is prudent to acquaint (and reacquaint) such paralegals with the workings and precepts of the larger justice system.

The first item on the suggested checklist, concerning legal ethics, requires repeated emphasis in both the orientation and the paralegals' on-the-job training experience. As was indicated in the introductory chapter of this manual, the subject of legal ethics really involves two issues: conformity to the appropriate rules which are designed to protect client interests and the absorption of certain attitudes, generically called a "client orientation," which gives breath to the policies underlying the rules.

In reviewing paragraph 1.4 of the manual, the trainer should prepare concrete, down-to-earth guidelines as to what constitutes the unlawful rendering of legal advice by laymen and make sure that the trainees understand and absorb these prohibitions. In these discussions, the point should be stressed that the program's clients are all in very vulnerable circumstances, and misleading counsel from *anyone* is potentially harmful to them. This in turn raises the question of what is potentially *helpful* in the paralegal's dealings with clients and how his work can serve to improve the client's trust and the long-term effectiveness of the professional service.

The two messages are difficult to follow simultaneously: be as responsive and helpful as you can, but do not respond to those legally significant concerns of clients without first getting explicit instructions from an attorney. The trainer should use real examples in the initial orientation and later training to get across the importance of handling these professional responsibilities in an effective and tactful manner.

This training topic gets even more complicated in preparing paralegals to work in inmate legal services programs. For as was pointed out in Chapter 3 (paragraph 3.13) and Chapter 4 (paragraph 4.37), paralegals in this environment are allowed far more room for independent action in response to client needs. Using that freedom responsibly puts an even greater burden on the planner to design a conscientious system of supervision and on the trainer to instill in the paralegals a desire to go no farther than their level of competence allows. For when the inmate legal services paralegal is off on his own, miles from any lawyer, "legal ethics" can cease to be a code of enforceable do's and don'ts and instead becomes the paralegal's own sense of what is proper and improper.

5.3 Preparing for and Providing On-The-Job Training (OJT)

5.31 The Meaning of On-The-Job Training

Actually working at a new job is the most stimulating and effective way to learn how to do it. The sooner the paralegal can start practicing his new job, the better. However, submitting the paralegal to pure trial-and-error experience on his own is not what is recommended here. Rather, it is a program of instruction and supervised practice — literally, on-the-job *training*, (OJT).

5.32 Carrying It Out

At first, OJT will probably entail the supervisor showing the paralegal how to do each task and then watching the paralegal do it himself, over and over if need be, until the supervisor is satisfied that the paralegal can do it reasonably well. If the task is a particularly sensitive one — conducting the initial interview of a new client, for example — the supervisor may want the paralegal to work into OJT by first observing the task being done by others, and then practicing it in simulated situations, just as law students learn trial practice through "moot court" experience.

To simplify the OJT process, it helps to break it up into units or clusters of tasks. Gather together samples of the papers and other by-products of the job so that the variations of the work can be explained as the paralegal proceeds.

5.4 Preparing and Providing an In-Service Training Program

5.41 Introduction

The orientation and OJT — followed up by intensive supervision, which tapers off to a more routine level in time — is designed to get the paralegal working full-time on the job as soon as possible. The aim is for a level of adequacy so he can be left to learn more, to bring problems to his supervisor, and get used to the job.

To aim for something higher than adequacy, it is helpful to plan in-service training sessions for the paralegal and possibly others with whom he works, when appropriate. A one or two-hour seminar, once or twice a month, may serve the purpose. It can be designed around learning an intricate aspect of the job — for which a specialist in the office or a technical consultant may be used — or it may be constructed as a problem-solving session. In any case, it is helpful to keep the focus rather narrow, and the goal of each session quite clear.

An opportune time to select issues to be covered in these training sessions is when they first arise in the course of the paralegal's early training and work experience. This presupposes that the supervisor can recognize opportunities to improve the paralegal's skills beyond the refinements that can be made in the process of supervision itself.

5.42 Paralegal Education and Training Programs

In the previous chapter, we suggested paralegal education and training programs as a good place to recruit new paralegals. They are also an excellent place to provide supplementary background and training for current staff wanting to become paralegals or wanting to improve their paralegal skills. Moreover, since many community colleges, for example, offer their paralegal courses in the evening, they are very well suited to the needs of working staff. Other such opportunities should also be explored, including law school (particularly night law school).

5.5 Long-Range Personnel Issues

After the paralegal is trained and on the job, he is, hopefully, a fully productive and beneficial member of the staff. However, he is also part of an organization, and like other members of the staff, merits on-going attention and concern. He and other staff members should be subject to a fair, responsive system of personnel management.

Since this is not a manual on overall personnel management—covering lawyers and non-lawyers alike—we only briefly note in conclusion five key elements that a comprehensive personnel system might cover. These are:

- *Policies.* Personnel policies should be spelled out in writing and codified in a manual, to avoid ambiguity and to notify staff about the office's expectations and procedures.
- *Supervision.* Both informal and more structured methods of supervising the way the staff member does his job and of reviewing his work products.
- *Periodic personnel assessments.* A formal way of assessing the staff member's performance, of noting his strengths and weaknesses, of informing him of these, and of committing them to a written record to be included in his personnel file.
- *Job rotation.* A fair way to share some of the more onerous tasks of the office, to provide staff with some variety, and to insure that there are back-up staff to fill in when one person is absent.
- *Career ladders.* A formal method of offering career advancement to the staff.

Beyond these, there are the larger organizational issues of the office which frequently have repercussions on the staff. The desire to make improvements in the way the office meets its responsibilities, which led to the employment of its first paralegal, should be kept alive. The modern public defender's office is an interesting, evolving organization. Defenders should be encouraged to institute changes (such as using paralegals), and periodically to assess their offices anew and, when it is warranted, attempt to install other improvements, again . . . and again . . . and again.

APPENDIX A

EXCERPTS FROM THE TRIAL ASSISTANTS' MANUAL METROPOLITAN (PORTLAND) PUBLIC DEFENDER

The Metropolitan Public Defender (MPD) has recently doubled its staff of Trial Assistants so that there are presently one of these working with every trial attorney on the staff.

In preparing for this increase of paralegals, the initial group of Trial Assistants and the staff attorneys prepared a large training manual which also serves as a resource book for Trial Assistants after their initial orientation and training.

The excerpts from the manual which follow include an outline of the orientation program and materials describing the basic elements of the Trial Assistants' work in preparing the defense case in both felony and misdemeanor cases. Much of the material is geared to the peculiar organizational and personnel system of that office, and all of it is tailored to Oregon law and procedure. Moreover, large sections of the manual, including extensive introductions to the criminal justice system, are omitted for the sake of brevity.

Nonetheless, the prosaic, detailed quality of the following sections of the MPD Manual illustrate clearly the manner in which the paralegal concept can be fully articulated and adapted to a public defender's office.

TRIAL ASSISTANT TRAINING PROGRAM
(General Outline)

WEEK ONE

MONDAY

Philosophy of Criminal Justice System (BLE)
Ethics (BLE)
Confidentiality (BLE)
Introduction to Criminal Procedure (L)
Tour of the Office
Tour of the Courthouse
Office sign up
Procurement of I.D. Card
Chief Investigator (L)
Senior Alternatives Worker (L)
Senior Secretary (L)
Senior Docket Clerk (L)
Executive Officer (L)
Executive Secretary (L)
Bookkeeper (L)
Reading of first third of the Trial Assistant Manual
Reading of ABA Standards on Defense

TUESDAY

Discussion of first third of the T.A. Manual
Mechanics of a Trial (BLE)
Lunch with Public Defender Trial Assistants (D)
Chief Criminal Court Coordinator (L)
Civil Commitments (BLE)
Plea Bargaining (BLE)
Reading of second third of the Trial Assistant Manual
Reading of ABA Standards on Prosecution

WEDNESDAY

Discussion of second third of the Trial Assistant Manual
Crimes Against Property (BLE)
Lunch with District Attorney Trial Assistants (D)
Deputy District Attorney (L)
Rape Victim Advocate (L)
Victim Assistance Program (L)
Civil Compromise (BLE)
Reading of the final third of the Trial Assistant's Manual

THURSDAY

Discussion of the final third of the Trial Assistant Manual
Discussion of ABA Standards on Prosecution and Defense
Observation of Circuit Court Arraignments
Tour of Courthouse Jail

Sergeant of the day shift (L)
Tour of Criminal Files
General Group Discussion
Motions (BLE)
Reading of the Criminal Code, substantive law
Reading of the Criminal Code, procedural law

FRIDAY
Criminal Procedure (BLE)
Tour of Police Station
Observation of Preliminary Hearings
Crimes Against Person (BLE)
Observation of District Court Arraignment
Arraignments/Recog/Preliminary Hearings/Sentencing (BLE)
Discovery (BLE)
PARTY

WEEK TWO
GENERAL
On the job Training with Experienced Trial Assistants

SPECIFICS
Ride-along with Police
Observation of "Immediate Contact On Notice" Program
Federal Attorney (BLE)
Child Advocate (L)
Tour of Oregon State Prison
Tour of Rocky Butte Jail
Tour of Women's Facility
Individual Discussions with Senior Trial Assistant
Trial Assistant Group Discussion
BLE = Basic Legal Education
L = Lecture
D = Discussion

IV. COURT PROCEEDINGS — FELONY

This section provides a discussion of the various court proceedings in the prosecution of felonies. The material is broken down for a "stage-by-stage" presentation, and examines the role of the Trial Assistant at each.

Appointments and District Court Arraignments

The appointment of an MPD attorney on a felony criminal case follows the arraignment and formal oath by the defendant that he has insufficient funds to obtain counsel. This is a fairly brief court proceeding, but one which provides the initial impressions of, and contact with, the client for both the attorney and the Trial Assistant.

MPD coverage of District Court arraignments is assigned on a weekly basis (Friday through Thursday), with a quota of 20 cases per week. The District 1 team, represented by an attorney and a Trial Assistant, will pick up the first 10 cases. The District 2 team, once notified of the filled quota by the first team, will pick up 10 more cases, and/or complete the week. Arraignments are held daily in Room 738 at 2:00 p.m.

The function of the Trial Assistant at District Court arraignments is primarily to open and exploit sources of information concerning the client. Prior to the start of court, the docket posted in the hallway should be checked, and the attorney will be notified of any special, major, or unusual circumstances surrounding a possible client. D.A.'s, police officers, jail guards, recog officers, and court clerks all make valuable comments before and after the proceedings, intended or overheard. These friendly conversations, however, should be out of the client's view, lest they be misinterpreted as "working with the D.A."

The formal charging of the client is effected by the D.A.'s reading of the "Complainant's Information of Felony." A copy of this accusatory instrument is then given to the defendant, and he is asked by the judge if his name is spelled correctly and if he understands the nature of the charges against him. The judge will inform the defendant of his rights: to be silent, to have an attorney present before and during questioning, to have the court appoint an attorney if he cannot afford one, and to have a preliminary hearing on this matter within five court days.

Once this has been established, the judge will inquire as to the defendant's ability to obtain an attorney. Usually, if the accused is able to do so, he will already have contacted an attorney and will have him present at this time. If the accused indicates that he does not have sufficient funds, the judge will question him further (employment, dependents, etc.), ask him to swear to his indigency, and have him sign an affidavit and petition ordering a court appointed attorney.

At this point, the judge will either appoint a private attorney present in the courtroom for this purpose, or the MPD attorney covering arraignments. In the latter case, the attorney will introduce himself to the client and proceed with the remainder of the proceeding—setting the preliminary hearing date and moving for recognizance or bail reduction if the defendant is in custody.

In custody cases, the attorney will usually point out his assistant to the client before leaving the courtroom with him as the one who will interview him. If time allows, the lawyer then proceeds back to the holding area for a very brief conference with the client before returning for more appointments. The assistant at this point receives the file and proceeds back to the jail for the initial interview. (Procedure will vary with assistant.)

For cases in which the defendant has been bailed or been recogged before his arraignment, a short interview is usually done by the trial assistant in the hall outside the courtroom. This consists mainly of obtaining such cursory information as addresses and phone numbers and giving the client a business card setting up an appointment for the next day.

For custody cases which are to be recogged or bailed that day, the assistant likewise makes initial contact with the client back in the jail. If necessary, only cursory information is obtained and an appointment for an office interview is arranged for the next day. No matter what the custody status, written as well as oral notation of the next court appearance is important.

Supplementing his first meeting and/or interview with the client at arraignments is the Trial Assistant's contact with various friends and relatives of the client present at proceedings. Quite often, especially when the defendant remains in custody, his family is at a total loss as to what has actually occurred, and any information concerning the legal counsel just appointed him can allay many doubts. Often it will be the assistant's function to explain to the defendant's family the details concerning the release of their just-recogged relative. Often, office appointments with witnesses can be set up there at arraignments.

Furthermore, the assistant's initial contact with family and friends at this time is understandably a valuable basis for further contact in reference to a planned recog motion or simply as a general resource. Sometimes the assistants may desire to contact a reference for recog on the spot or to notify the alternatives worker on the team of an urgent situation requiring his help. The phones in the Grand Jury anteroom (Room 722) are available for this and related purposes.

After conducting the initial interview at the jail, the assistant should return to 738 to receive any additional cases picked up and/or to wait for further appointments if time and an unfilled quota remain.

Preliminary Hearings

"A preliminary hearing is an adversary, post-arrest, pre-indictment, pre-trial, judicial screening procedure provided by statute ORS 135.070 through 135.225 and is designed to safeguard against pre-indictment, pre-trial detention of an accused on hasty, improvident or groundless indictable offenses. A preliminary hearing is simply a course of procedure whereby a possible abuse of power may be prevented and the accused discharged or held to answer, as the facts disclosed at the hearing of the charges contained in the information of Felony warrant."

The function of the preliminary hearing is to determine whether *probable cause* exists to hold the accused for trial. "The minimum quantum of evidence required for this bind-over standard is more than that for probable cause to arrest but less than would prove guilty beyond a reasonable doubt."

For several years, in Multnomah County, the "directed verdict" rule has been applied to defining the minimum quantum of credible evidence necessary to support a bind-over determination. Under this standard the hearing magistrate views the case as if it were a trial and he were required to rule on whether there is enough credible evidence to send the case to jury. Thus, the magistrate will dismiss the information of felony and order the defendant's discharge when, on the evidence presented, a trial court would be bound to acquit as a matter of law.

The preliminary hearing is frequently utilized by defense counsel for four other important trial preparation functions: (1) discovery, (2) freezing the prosecution testimony, (3) perpetuating the testimony used at trial, and (4) affirming the client-attorney relationship by the "day in court."

The Trial Assistant's job at the time of the preliminary hearing is one of facilitation. He is required to provide the attorney with the necessary information required to effectuate the above stated trial preparation functions. This is usually accomplished by having done a thorough initial interview with the client. This is supplemented by adding information from the investigation section and alternatives division.

1. It is imperative to have your client in Room 728 at the specified time for the hearing, or at the office earlier, if so planned. (The client makes his/her "First Appearance" in this same room.)

2. Explain fully to your client the nature and extent of the proceedings. Explain his participation in it.

3. If your client is in custody, have prepared a release alternative. This can take the form of bail or own recognizance.

4. Contact the client's family and/or friends and discuss the bail alternative with them. If they are agreeable have them present at the hearing. Subpoena witnesses if necessary.

5. Always prepare supportive factors to substantiate a motion for recognizance. It is beneficial to show your client is a law-abiding, gainfully employed citizen with ties to the immediate community. He should have a place to stay; if possible, a third party to effectuate a third-party release. The Trial Assistant should look for someone who is reflective of middle-class standards to act in this capacity.

6. The Trial Assistant should listen to the testimony given at the hearing and take notes. This will familiarize you with the State's evidence and demeanor of their witnesses. Remind the attorney to ask the witness their "date of birth." This will facilitate obtaining of the witnesses' rap sheets for potential impeachment at later appearances.

7. After the hearing, explain to the client what happened if he did not understand. There are four possible options: (a) If the case was bound over to the Grand Jury the defendant must be indicted by the Grand Jury within 30 days of the preliminary hearing, or (b) be arraigned in Circuit Court on a District Attorney's Information of Felony. The latter option is usually done within three judicial days and is often referred to as a "Three Day Bind Over." If the case was dismissed for lack of probable cause, or because the

State was unable to proceed, the case (c) may be permanently dismissed, or (d) the District Attorney can seek a Grand Jury secret indictment, in which case, a second arrest would be necessary, a fact of which the client should be made aware.

8. Explain to the client the importance of continued attorney-client contact.

9. Give the client written notice of his/her next court appearance.

10. Inform the other members of your team of the result of the preliminary hearing.

11. Prepare supplemental investigation requests based upon the information received at the hearing.

12. Keep abreast of the investigation's progress and channel that information to the attorney.

13. Keep the communication channels open with the alternatives worker on your team.

14. Try to procure the police reports and any other relevant documents.

15. Notify the client if he/she was indicted within the 30-day period and must report for arraignment in Circuit Court before the date received at the time of the preliminary hearing.

Quotes are taken from:
101 Questions and Answers on Preliminary Hearings
By Judge Richard L. Unis
Oregon State Bar
Continuing Legal Education
1971

BOUND OVER TO GRAND JURY/HELD TO ANSWER

The Trial Assistant's primary responsibility between the preliminary hearing and the Circuit Court arraignment is client contact. The Trial Assistant should assume responsibility for producing the client for the Circuit Court arraignment.

Cases proceed from District Court to Circuit Court by two methods. The DA may elect to proceed by either District Attorney's Information of Felony or Grand Jury indictment. The DA will inform the defense of his election at the preliminary hearing. If the DA elects to use the DA's Information of Felony, Circuit Court arraignment will be set three days after the preliminary hearing. In such cases, the defense attorney will advise the client of the Circuit Court appearance immediately following the preliminary hearing. This should suffice.

If the DA takes a case before the Grand Jury, however, the Circuit Court arraignment is not definitely set. By law, the State has 30 days to present a Grand Jury indictment at the Circuit Court level, absent of showing a good cause for delay. The State may proceed more quickly, setting the Circuit Court arraignment at any time within the 30-day period. The Trial Assistant must maintain contact with the client in order to produce him either at the automatic 30-day arraignment or any earlier arraignment date.

If the Circuit Court arraignment preceeds the 30-day period, the Court will advise the MPD docket clerk of the date two days in advance. The docket clerk will record the date in the central Kardex and will mail a letter. It is therefore important that the docket people have up-dated information on the client's whereabouts. The Trial Assistant should try to make personal contact with the client, preferably by phone. When you contact a client, explain the mechanics and purpose of the arraignment. If you and his attorney will not be present at the arraignment, explain that another MPD attorney will handle the matter. Advise the client to carry recog or bail papers to expedite if something extraordinary should happen (i.e., client may be taken into custody, or reinterviewed for recog.) It is imperative that the TA explain such possibilities. In some cases, a Trial Assistant may have to send an investigator to the client's last known address, but that should be avoided. Try to contact any and all addresses in the client's file. Give the investigator as much time as possible for such requests.

All efforts made to contact the client should be recorded and communicated to the attorney who will represent the office at the arraignment in question (see attached). The simplest method is to record all contact efforts on the court's arraignment notice and place it on the Circuit Court arraignment clipboard in the Trial Assistant's room. If contact is completed prior to the day of arraignment, keep information at your desk until the day of arraignment. If special notation is necessary, a hand-written or typed explanation should be clear and detailed. For example, if the attorney must request a set-over, your information must provide adequate substantiation to explain the situation to the attorney and request in the judge's eyes.

The procedure followed in 30-day arraignment appearances is very similar, except the court will not advise the MPD office of the date. Both the defense attorney and the client receive formal notice of the 30-day appearance date at the preliminary hearing. This notice, however, is not sufficient to produce the client. The Trial Assistand should record the 30-day appearance date on his own records, review these dates once a week, and advise the clients when the date approaches via letter or phone. Keep copies of all such letters for file.

Communication of contact efforts and special notations follow the same procedure as outlined above. Occasionally, the Court of the DA will overlook the 30-day appearance date. After the Trial Assistant is certain that a client will make the 30-day appearance, he should check the court's arraignment docket to ensure that the client is on the docket. If the Court improperly omits a client from the docket, the Trial Assistant should call the Chief Criminal Clerk, 248-3235, and advise him of the problem.

One aspect of the 30-day appearance law merits special interest. Technically, the State must indict within 30 days, show good cause for delay, or dismiss the case. For non-custodial clients, the failure of the State to produce the indictment in due time is meaningless. They must return when the indictment is handed down. For custodial clients, however, failure to indict may provide an opportunity for release from jail (and for harrassment of the DA). The Trial Assistant should inform the attorney handling arraignments to move for dismissal if the State fails to indict custodial clients within the 30-day period. The TA should explain to the client that such dismissal does not constitute a finding of not guilty and jeopardy does not attach. The State can, and will, re-bring the case.

The Trial Assistant should also be cautious of not "losing" clients whose cases are dismissed at the preliminary hearing. Cases are often dismissed at preliminary hearings for non-substantive reasons (i.e., policeman or victim missing). Since these cases are dismissed, the 30-day arraignment rule does not apply. The State can take more than 30-days to indict in these cases. The Trial Assistant should take extra pains to ensure the production of these clients at least once in two weeks. Investigation, alternatives, and legal work should proceed despite procedural dismissals. The TA can contact Grand Jury secretary, 248-3131, to check the status of cases. The TA can set-up arraignments with the Deputy Criminal Clerk handling arraignment dockets, 248-3892, once an indictment is returned in such cases.

The Trial Assistant has little responsibility for cases while they are in the Grand Jury *per se*. In some cases, especially major cases, the attorney may chose to have the defense witnesses testify before the Grand Jury. In such cases, the Trial Assistant should assist in expediting the investigation and coordinating the testimony. If defense witnesses do testify before the Grand Jury, either attorney or Trial Assistant should await potential questions during the testimony. The defense witness cannot have advice from counsel in the Grand Jury room, but he may step outside during the questioning to seek advice, so he should have pre-arranged a communication method with the attorney in case legal problems arise.

CIRCUIT COURT ARRAIGNMENTS

The Trial Assistant assigned Circuit Court arraignments must collate all contact information, handle initial interviewing, and perform handholding functions during the court proceedings in Room 702 at 10:30 a.m.

The Trial Assistant responsible for the Circuit Court arraignment should insure that the attorney has information on all MPD clients on the arraignment docket early in the morning. The Trial Assistant should remind the other Trial Assistants of any clients on whom they have not compiled proper information. (Some attorneys take the arraignment clipboard to court before 9 a.m., which can present problems.) A most practical procedure would be to allow the Trial Assistant to bring the clipboard to Room 702 at 10:30.

Common sense should guide the Trial Assistant's actions during the arraignment itself. Many things happen speedily, the Trial Assistant should pay attention and help when he can. For example, if a question arises regarding the defendant's bail, contact 248-3971 (District Court) to verify defendant's bail amount or 248-3808 (Circuit Court). The Trial Assistant can use the arraignment appearances to confer with clients, obtaining updated information for contact, investigation, or alternatives; make notes on any new data and add to the client's file. The Trial Assistant may use the time to confer with friends or relatives of newly appointed clients. These people can provide contact information, background material, and occasionally they have knowledge on the charge itself. The Trial Assistant should refer them to the recog office. If the office picks up an out-of-custody client, the Trial Assistant should interview him as soon as possible.

The Trial Assistant should take a few minutes to explain to each arraigned client the meaning of the pre-trial and trial dates.

The Trial Assistant should interview all new clients that day if possible. Sometimes newly appointed custodial clients return on the "noon" chain between 12:30-1:00 p.m., so efficiency and quickness are imperative. If a Trial Assistant knows he cannot interview all the new clients the same day, he should interview fugitive and serious cases first since they will require immediate attention.

When the Trial Assistant returns to the office, he will probably have several urgent tasks. Handle the immediate problems for new clients. Inform other Trial Assistants of no-shows. Start investigation (and alternatives).

The Public Defender's Office picks up 12 new cases, fugitive and non-fugitive, and all fugitive matters. The Circuit Court counts bodies, not charges in assessing the MPD appointments. (The District Court procedure counts charges.) If the MPD represents a client prior to Circuit Court arraignment, that client would not count toward the MPD quota in Circuit Court. These "open" cases remain in the name of whichever attorney already represents the client.

If your client is on bail and he appears for the Circuit Court arraignment, one way to expedite matters is to verify that defendant's bail has been posted prior to the arraignment. If the bail was posted in District Court, the Clerk at 248-3971 can verify who posted it and when and for what C#. Then request him to transfer the bail to Circuit Court.

Another way, and the best way, is to impress upon your client to keep his bail receipt and/or recog form on his person at all times.

Bail Hearings

A bail hearing is a formal hearing in front of a judge in either the Circuit Court or the District Court. When recognizance or bail reduction is initially denied and an attorney and the Trial Assistant believe there is an adequate possibility to have their client released on recog or the alternative, having his bail reduced, then it is the proper time to request a bail hearing.

Let us assume that recog was denied at the District Court arraignment and once again at the preliminary hearing. Once the pre-lim is completed and the client held to answer in the Circuit Court, the Trial Assistant can immediately begin working towards a bail hearing. The Trial Assistant should first notify the Chief Circuit Court Recognizance Officer as soon as the client is Held to Answer. The Trial Assistant should then notify the appropriate people who know the defendant well and "feel out" the defendant's living situation. Often times this includes the parents, foster parents, relatives, guardian, etc., anyone who feels that they know the defendant well enough to vouch for him.

The main thing to look for is a place to stay. When talking to people in the defendant's behalf, the Trial Assistant should inquire whether the defendant can live with or stay with someone who can assure his presence in Court. The Trial Assistant should also, with the client's permission, notify any employers who might explain the defendant's work situation. Once you believe you have sufficient evidence to prove to the Court that the defendant is eligible for recog, then is the time to set a time for the bail hearing.

If the defendant is on probation, a word from his probation officer can be invaluable. Have him call the judge or write the judge on the defendant's behalf or the best choice, have him present at the hearing.

Many bail hearings require no testimony from the people who come to court, simply their presence. Other bail hearings require testimony to the effect of the defendant's living and working situations and whether the witnesses believe the defendant is a good candidate for recognizance and whether or not any of the witnesses would act as a third party custodian for the defendant.

The procedure for setting a bail hearing is as follows:

1. Call the Chief Criminal Clerk at 248-3235 and notify him that you request a bail hearing. Try to get the earliest possible date.

2. Be sure to tell him the approximate length you believe the bail hearing will take, i.e., how many witnesses you plan to call; this helps him in scheduling.

3. He will ask you the defendant's name, and C# and the time of the hearing. Make sure this coincides with your attorney's schedule.

NB: Call the Chief Criminal Clerk when the bail hearing is in Circuit Court. For District Court, call whomever is presiding at the time in 738.

Pre-Trials

The pre-trial conference is an informal meeting with the District Attorney, defense counsel and defendant. The attorneys share general information on how each will approach the case. They exchange discovery information. Most important, the DA will officially make his plea offer, if any, at this time.

The TA has no actual role in the pre-trial conference *per se*. The TA has a role in preparation for the pre-trial conference. The TA should insure that the client is present. The TA should make certain the client understands the function of the pre-trial. Circuit Court arraignment provides an opportunity for discussing the purpose and timing of the pre-trial. A phone conversation is adequate.

Pre-trials occur in Room 702, in the room demarcated "Pre-Trial" unless special arrangements take place. (In case you need to contact an attorney who is in pre-trial, the phone extensions are 248-3763 and 248-3075). TA's should use these phones to make calls from the courthouse. Feel free to enter the pre-trial room at any time. Use judicious discretion in using phones if pre-trials are in progress.

Occasionally, an emergency or unusual circumstance will arise. If an attorney cannot attend a P/T, a TA may be asked to find a substitute attorney. If so, the TA may need to either familiarize the sub with the case or sit in on the P/T. (Finding a substitute attorney is, however, the attorney's obligation.) On even more rare cases, the TA may have exculpatory evidence about which the defense attorney should advise the DA. The attorney should be kept informed of any such evidence in order to strengthen his bargaining position.

In order to remain abreast of case developments, it is highly beneficial to learn of the DA's plea offers. An offer—or lack of offer—often dictates the defense's approach to a case.

Trial Work

One should always begin with the assumption that a case is going to trial. As the Trial Assistant becomes more familiar with a case, he becomes accustomed to weeding out the ones that don't go to trial and the ones that do.

By the time one is certain that a case is going to trial, the mechanics of preparation should be completed, i.e., investigation, subpoenas, alternatives, psych evaluations, etc. The Trial Assistant should do the mechanics as a matter of course whether the case goes to trial or not, but it is imperative that all the investigation is completed well in advance, the alternatives worker having already worked on the case, and the subpoenas being typed and served in advance. Having the mechanics complete early will save everyone aggravation and make the machine run smoothly.

The Trial Assistant should always try to be present when his/her attorney is in trial, unless other factors would make the former's presence in the office more practical. First, a trial demands total attorney concentration. It is the culmination of all the work in a case, and it necessitates all the attention an attorney can direct. With the caseloads that MPD attorneys carry, conflicts with other court appearances and clients often arise. In this respect, the Trial Assistant should view himself as trial coordinator. Not only coordinating the trial mechanics, but also making sure the attorney is covered, should he have another appearance. These are primarily that attorneys' responsibilities, but the Trial Assistant can help if needed. If another attorney is to cover for the attorney in trial, the Trial Assistant can make sure that this attorney is briefed on the case; the Trial Assistant might even be present at that other appearance to explain to the client what has happened and why his/her attorney could not be present. Should any emergencies arise, the Trial Assistant should notify the attorney, but only if it requires immediate assistance.

Secondly, one must remember that at a trial, there are many people to deal with — the defendant, the defendant's family and friends, and any witnessess which the defense calls. Here the Trial Assistant has responsibility for the witnesses. Such individuals arrive and want to know what's happening, when and if they will be called, and what they're going to say and how they should say it. The Trial Assistant can help by keeping order in the hallways and by providing general reassurances to nervous/curious witnesses. However, he should be careful not to specifically advise witnesses about the content of their own or others' testimony.

At times it might seem that the Trial Assistant is merely babysitting defense witnesses, but it is more than that. It is keeping them informed and orderly and when the witnesses know what's happening, the whole show runs much better. The Trial Assistant should attempt to take care of any emergencies which come up at the trial either with defense witnesses or other clients. I can best illustrate my point with a personal example: In one particular trial, we subpoenaed and intended to call five witnesses and further intended to call them in a specific order. When the witnesses arrived, one of them was heavily intoxicated. I immediately notified the attorney, and he consequently juggled the order while I and the witness' brother tried to sober him up in the bathroom. I kept the attorney abreast of the condition of the witness and gave him my opinion as to the capability of his testifying due to his intoxication and approaching sobriety. The witness ended up not testifying, but this is one example to show how a Trial Assistant's judgment and assessment of a particular emergency had a direct bearing on the development of the trial.

Emergencies come in all shapes and sizes and are not limited to witnesses. Even if there are no witnesses, the Trial Assistant should assess the defendant's family and friends, introduce himself to them and ask their full cooperation in remaining silent and attentive. Nothing is worse than people who show on the defendant's behalf, who make sneering remarks or sounds, or who walk in and out of the courtroom. Remember, the jury sees and hears all, and impressions do carry weight.

In order for the Trial Assistant to communicate with his/her attorney during the trial, it is helpful to sit in the bench which divides the spectator section from the rest of the courtroom. This provides easy access in which to pass the attorney notes, if needed. This bench is not for spectators; it is reserved for members of the Bar, but the Trial Assistant should sit there nonetheless. This can be arranged by having the attorney introduce the assistant to the judge, the clerk, and bailiff, so that they know who you are, what you are doing there, and why you are going in and out.

Many times trials are scheduled to start at one time and end up starting a day or two later. This causes problems with time, particularly with witnesses. All attempts should be made at accommodating witnesses and not subjecting them to idle waiting. On the other hand, a witness cannot be late. For example: Say a trial was scheduled to start at 2:00 p.m. It would be foolish to have the witnesses there at 2 p.m., since they would simply end up waiting while the jury was chosen and opening arguments were made. Depending on the State's case, one is safe in asking the witnesses to arrive at 9:30 a.m. the next day. Remember the *voir dire* takes at least one to one-and-a-half hours for a 12-person jury, and less for a six-person jury. Then assess the State's case and attempt to figure out how many witnesses will testify. Then some estimate as to when the defense witnesses are needed can be made. It is always, always, always better to be early than late, but some effort should be made to accommodate the witnesses. A good idea in this regard it to call your witnesses during the trial and tell them to "stand by," i.e., to be ready to come upon a phone call. This will allow you to assess the witnesses' demeanor and to adjust the scheduling for parking problems. Such a communication method should be explained so the judge ahead of time to "cover" any delays.

Our office has a list of jurors for each jury term and a jury verdict notebook. When a verdict has been reached in a jury trial, a standard practice for the Court is to poll the jury members to determine how each voted. The MPD attorney or Trial Assistant may then record the verdict in the jury verdict notebook. See following memo from Greg Hawkes.

MEMORANDUM
TO: Attorneys and Trial Assistants
FROM: Greg Hawkes
RE: JURY VERDICT NOTEBOOK
DATE: June 17, 1975

Al Sobel, a work study student, has been assigned the task of preparing and maintaining a Jury Verdict Notebook so we can keep better track of how jurors are voting in various cases as well as having that information available here instead of the county law library.

The notebook will contain basically the same information provided in the law library notebook and will be kept up on a weekly basis. It will also contain copies of the jury questionnaires. The notebook will be physically located on the counter next to the Xerox machine until we move and in the law library thereafter.

To supplement the notebook, it would be most helpful for our own cases to be included with any particular comments you may wish to make, e.g., why you chose to exclude Mrs. Haas from your jury.

Therefore

Please let Al Sobel know what jury cases you are involved with, the type of case, the vote of each juror, and any comments you have as to particular members of the jury panel. As we continue with the project, we will try to come up with some statistics which will increase the predictability of a defense or prosecution verdict by a specific juror.

If you have any comments or suggestions, please let me hear them.

Final Disposition

In post-trial proceedings, the Trial Assistant is responsible for coordinating many of the loose ends which will close a case. Of primary importance at this stage is the progress of the alternative's work.

The follow-up and presentation of the material developed as an alternative should be discussed and evaluated by both the attorney and worker. This is of increasing importance as sentencing becomes imminent, for the attorney must be advised of all progress and any setbacks which may develop. The Trial Assistant should make certain that all input from other, as yet unexamined, sources (probation officers, family, victim, etc.) which may in any way influence sentencing has also been channeled to the attorney. Close cooperation with the alternatives worker is especially important.

During the actual sentencing, there is virtually no role for the TA. He should, however, ensure the client's presence and his comprehension of his situation. Client contact during these final stages is sometimes underrated; it may be up to the assistant to continue as liaison with the attorney, especially if the proceeding is set over.

Also at final disposition, the assistant's responsibilities include many practicalities—effecting bail exonerations and property returns, expediting transports to correctional/alternative institutions, sending a copy of the judgment order to the client, and officially (clerically) closing the file.

A disposed-of charge may remain pending or be re-opened if a parole or probation violation is involved. In this event, the Trial Assistant's major task would be assembling pertinent information on the client and organizing this material for court presentation.

Client Contact

Lack of attorney or Trial Assistant contact with the defendant is the single most frequent complaint a client has. The TA has great responsibilities in this area. Client contact is probably the single most important function the TA has. The TA is the attorney's *alter ego*, one who the defendant can contact and speak with when the attorney is unavailable. The TA should never overlook any phone messages he has received while he is away from the office. Call the client back at the first available time. This assures the client more than any other method that the Public Defender's Office is interested in the well-being and outcome of our client. It also keeps the client's minds at rest, informing him of any proceedings that have occurred since the last contact and assuring him that everything is done out in the open and nothing behind his back. It also has an amazing difference in the number of appearances missed and Bench Warrants issued.

This applies to both clients in and out of custody. While a client is in custody it certainly is more difficult but nonetheless important. An occasional phone call or call-in can do wonders to ease the client's mind and frustrations. When a client is out of custody, an in-the-office appointment with the attorney is preferable, as early as possible.

All clients should be contacted on a weekly basis at least. It is when one hasn't heard from a client in a few weeks that loss of contact occurs and bench warrants are issued. With clients that have phones, it is certainly easier. Clients with no phone are required to keep in touch with their attorney and Trial Assistant, but an occasional letter urging them to do so is helpful.

Client contact is most essential to assure court appearances. A TA should be caught up enough on his attorneys schedule to know when and where a client is to appear. He should call or write specifically to that client whenever an appearance is forthcoming, explaining the time, place, and nature of the appearance. There is a form which one can use with the pertinent information on it. This is useful for clients with no phones and a forthcoming court date. An example is included in the following.

METROPOLITAN PUBLIC DEFENDER
EXCHANGE BUILDING
514 SW 6th Avenue, 5th Floor
Portland, Oregon 97204

Date:

Re: State v. Hennings

Dear Irving:

This note is to inform you that your next court appearance is scheduled as follows:

DATE: March 11, 1975
TIME: 9:30 a.m. (come in 15 minutes early)
PLACE: Courtroom *702* Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, Oregon

JUDGE: Gerlicz
REASON FOR APPEARANCE: Sentencing

Please call my Trial Assistant, at 225-9100 if you have any questions regarding the above appearance.

Very truly yours,

Bud Weiser
Trial Assistant for
Harl Haas

Xerox this note and put it in the file to show that a message has been sent. This brings us to another area. All messages from clients, especially out-of-custody clients, should be kept in the file to show client contact. This can be very useful to show a judge when by chance a client doesn't show that it is unusual of the client's behavior; that he has kept in contact in the past. This can avoid a bench warrant or cause a bench warrant to be rescinded.

Make sure any change of address, phone number, or job is noted in the file. It is not necessary to put every message in the file, i.e., if the client calls five times a day, but it is important to show continuous contact.

Continuous client contact will make everyone happier, will make our machine run smoother, and will provide for better representation.

The Trial Assistant and Attorney

There is no set standard which guides a Trial Assistant's office relationship with his or her attorney. Different attorneys operate in different ways, as do Trial Assistants. As stated earlier, a TA is more or less lubrication to make the machine run smoother. Some attorneys rely heavily on TAs, others not so heavily. Ergo, I will write mostly about my own experience and ideas. First I will comment on attorney's schedules.

I have found that the dockets the attorneys hand in at the end of each day provide the best way of keeping up with attorney's calenders and schedules. If your attorney is diligent about filling in his own docket, then a good idea would be to Xerox the docket for that day and enter in the appropriate date and time in either your calendar or your attorney's calender. If the attorney would prefer the TA handle his docket, fine, all the TA need do is look in the file and find out what happened that given day. The attorney should always note in the log sheet of the file what has occurred on that day and if any further date is set. Constant completion of the daily docket will enable the TA to find out what happened at each scheduled court appearance. This will also enable the TA to keep up to date the attorney's calenders.

Not all attorneys like to use calendars, some use their own appointment book. In any event, the TA should keep some sort of visual aid so he knows his attorney's schedule for that date. Knowing his attorney's schedule will help the TA cope with any emergency situations which may arise.

The TA should think of himself as a person close enough to his attorney so as to relay or handle any information pertinent to a client. In many cases the TA will have more client contact than the attorney. In this case, it is important to note to the attorney any changes in the client's attitude or desire or even if there is no change, that is important as well. Every time a client is seen it should be noted in the log sheet of the file. Hence, one should get an impression from reading this that the TA should take an active part in rendering his opinion as to the nature of the client's case and the character of the client. Many times the attorney will ask the TA's opinion on a certain case. The TA should not feel intimidated or any such nonsense, he should render his opinion fully and honestly, many times, in fact usually, that opinion will be welcome.

The TA should feel himself/herself more or less an equal with his attorney. Certainly the TA can't address himself to the legal questions that arise or to the legal strategy involved, but the TA should contribute whatever he deems necessary regarding an individual case. He should feel free to criticize and to suggest and at the same time leave himself open for criticism.

I have found that TA's provide another opportunity for a third party to reach the attorney, whether it be a client's relative, a DA, a judge or judge's secretary, or the attorney's loved one. Therefore, it is important that the TA establish such a relationship with his attorney and feel free to introduce the TA to the DA or a judge. The TA should feel free to ask his/her attorney to introduce the TA to these important people. This is an invaluable method for opening an additional avenue for important messages to reach the attorney, and also assists the TA to contact these people without fear that he may be stepping out of bounds.

In closing, the TA should be his/her attorney's *alter ego*. Other memoranda have been addressed to the TA's mechanical function, this one should be viewed as a part of that, but with an insight into office relationships with their attorneys. Honesty is the best policy. If something is bugging you about your attorney, or something related, don't hesitate to say so. Criticize when you think it's needed and be open to criticism. The best relationships are the honest ones, and the better the relationships between the TA and the attorney, the better job done and the more enjoyable the job is.

Property Returns

Every defendant has a right to his property. Many times the property involved, be it personal possessions or a car, is difficult to track down, but the defendant still has his right.

There is no standard procedure to locating and returning one's property, but the best place to begin is the obvious—at the beginning. When doing the initial interview, make sure you ask the defendant what property was seized from him, on the appropriate section, and if he/she received a property receipt. This gives you the initial information should an immediate problem arise.

The general procedure for police confiscation of property is as follows:

- The defendant's personal belongings (what he has on him at the time of arrest) are placed in the property room at Rocky Butte Jail, or else are kept in plastic bags at the Courthouse Jail, and the defendant receives a receipt.
- Many times property is held as evidence in the defendant's case. This being the case, the property is held in the property-evidence locker at the police station at SW Second and Oak, and either the defendant himself receives a receipt or a receipt is stapled to the police reports in the case. Make sure you have the police number readily available and be sure to distinguish whether it is a PPB number or an MCSO number.

In the former case, the defendant receives his property when he is discharged from jail, so that it is important for the defendant to hang on to his receipt. A copy of the property receipt is lodged at the jail, but it is wise for the defendant to keep one himself.

In regard to the latter case, property held as evidence is a bit more difficult. Property held as evidence can't be touched until the defendant's case has been judicated. Sometimes one can pick up the property in question immediately following disposition of the case. However, the more common case is that property is usually held for the 30-day appeal period following disposition.

When in question to whether one's property is being held, one solution would be to call the property room and with the police number in hand, ask whether the property is being held. If still in question, a call to the Deputy DA handling the case should clear up any questions. When calling the property room, be sure to ask what specific items are being held. Once the 30-day appeal period has run out, a good idea would be to again call the PPA and inform him likewise and ask him to release any holds still on the property.

It is when property is either lost or misplaced in transit that real confusion sets in. Then the real time consuming and frustrating efforts the Trial Assistant puts in are required. Here is where the true investigative skills are shown as well as ingenuity and most of all patience. Once again the only place to start is at the beginning—at the time and place of arrest. From there on, the Trial Assistant is on his own. I have found property to be found in an ambulance, at the housekeeping department in a hospital, and in the car after it had been scrapped. It might be necessary to follow the path the property has taken whether this entails talking to the arresting officer or his superior. I can only say be patient, be wise, and good luck.

Concerning automobiles that have been seized, the investigation again takes on different facets. If a defendant is seized in his car, the car is usually impounded. If the car is involved in the crime, i.e., drugs, transporting goods, etc., the car is then held as evidence. If a car is impounded, find out where the car has been taken, call them, and find out if there are any holds on it. If not, inform your client he may pick up the car. If the car is being held as evidence, the same procedures hold true as for personal property. One thing to remember, however, sometimes property is located in a car seized as evidence. Make sure to distinguish whether the property in the car is being held. The sergeant heading the car detail is helpful in ascertaining pertinent information regarding your client's car. His number is 248-5625.

In cases concerning cars and drugs, many times the car is confiscated altogether under the assumption that it is being used for transportation purposes. Investigate this avenue with your client, then discuss it with your attorney and see if a hearing on the matter is appropriate.

Once you are sure that property, whether in a car or at the property room, is no longer needed, call the DA legal assistant of the appropriate unit and have them type up a release for the property. This will enable you and your client a rapid recovery of the property.

Closing Cases

After final disposition—be it dismissal, trial acquittal, sentencing, or probation hearing—a case is closed by making this notation on the daily docket and placing the file in the "closed" bucket by the main shelves. It usually will be up to the attorney to enter and initial the closing entry on the log, but the Trial Assistant should insure that completed cases are removed for filing.

Sometimes, if the State has indicated that the case will be presented to the Grand Jury after District level dismissal, the file could remain open awaiting indictment. The exercise of this option is a matter of judgment on the part of the attorney, dependent on his knowledge of the State's case.

Generally, however, a case is closed upon reception of the judgment order. This occurs via the mail run within a week of the dispositive court proceeding. After the order is examined for any errors, a copy is made by the assistant for the defendant and the original place in the file, which is then closed.

If a dismissed case is reopened because an indictment is returned or for other reasons within 60 days after closing, the file retains its prior MPD number. If the interval has been longer than two months, a new file must be opened by the assistant and a new number will be assigned. Probation revocations likewise require a new file, but assume the original number of the charge with the addition of the letter 'R' (Example: 75-1335R).

Probation/Parole Violation Hearings

A probation hearing is a court proceeding before the sentencing judge to decide whether an alleged violation of probation has indeed occurred, and if so, what judgment should be rendered. The District Attorney and the defendant's Probation Officer will be present, in addition to the defense attorney, client, and judge.

A parole violation hearing is a proceeding attended by client, parole officer, defense counsel, and hearing officer to determine whether any violation of parole conditions has occurred, and if so, whether parole should be revoked. The hearing officer will make findings of fact and suggestions based on this hearing to the Parole Board.

The tasks of the Trial Assistant in a probation revocation or parole violation hearing are organizational in nature. They assemble the needed information to effect a favorable outcome in the proceedings and intervene for the client.

The first step is to procure the official court documents in the case. A copy of the "Order to Show Cause" can be obtained from the issuing judge, the parole board, or from Circuit/District Court criminal files. Make sure you have a copy of the Judgment Order or the Parole Order that originally placed your client on probation/parole. Obtain a copy of the probation/parole officer's recommendation.

Establish what specific points and issues the judge or parole board will be looking at. It is your job, along with the attorney, to ascertain whether these points are valid accusations. Prepare points in mitigation to refute the proported claims. More importantly, establish as much positive information about your client as possible. You must show that he is a productive, gainfully employed, and law-abiding citizen. This may be done by assembling letters of recommendation from employers, friends, clergy, and members of the family.

After this information has been assembled and you have some idea as to the merits of the case against your client, it is time to talk to the probation officer. This is an exploratory discussion usually done on the phone to ascertain the probation/parole officer's feelings about your client. If he or she is very adamant about revoking your client, it is probably best not to argue with them at this time. If he or she is indifferent or positive about your client, it would be appropriate to further laud the positive attributes of your client. Try to get their commitment to speak positively about your client at the probation/parole hearing. This has a great influence on the hearing's outcome.

In most cases an Alternatives Report is a necessary tool to prevent revocation or violation. Look at the initial report done on the client at the time of sentencing on the substantive charge. Have the same alternative's worker update the report. Chances are good she is familiar with the client. If he/she is not available, have your team alternative worker prepare the report.

Once you have assimilated all the information you are ready for the hearing. Have written reports prepared and subpoena the necessary witnesses.

As a general rule the MPD attorney who represented the client on the substantive charge will handle this hearing. The MPD Assistant Director will assign an attorney on a rotating basis to handle the matter in light of other circumstances.

Office Records

Each Trial Assistant provides his own variant on the basic theme of case records. All, however, receive their greatest informational input from the dockets. There are the forms provided daily for the attorneys which list by PD number each defendant set for an appearance on a given day, and provide his present custody status, as well as the room, time, judge, and reason for the appearance. The attorney then fills in the disposition for all entries. It may be most practical for the assistant to Xerox a copy of this completed form for himself and the alternatives worker and to daily enter the developments on individual cases in a personal logbook of some type. While methods of personal recordkeeping will vary, it remains the assistant's responsibility to make sure that his attorney's dockets are turned in daily to the clerk.

Personal records, as stated, will vary with the assistant. They might perhaps include, however, a list of basic data on each case—charge, custody, status, client phone numbers and addresses, court numbers, appearance dates, and copies and notations of alternatives and investigative requests, as well as particular notes as needed. This record book can be organized according to individual preference, but should be utilizable by anyone. A running list of phone numbers and various links in the court system is absolutely imperative.

The attorney's case file contains a log sheet for notation of any contact or development in a case. When making an entry in these official case logs, the assistant should date and initial his remarks. Any lengthy details concerning the case should likewise be written down (in formal or informal report) for inclusion in the case file.

There are other office records which may be employed for case work. One of these is the main

Kardex file in the docket area; this provides the current status of every open case in the MPD office, listed alphabetically by client. The closed file, containing the Kardex cards for closed cases, in valuable in locating the PD number on a particular case. The file in question would then be pulled from the main shelves. Both Kardex files serve an additional function in providing an index for cross-checking conflicts and prior office representation.

If a closed file is requested for some reason, it can be pulled by the docket clerk. The following form placed in a box in the docket area will accomplish this. This "request form" also can be used when a conflict check, paper-pull, or case-opening are needed.

REQUEST FOR KARDEX SEARCH

CASE NAME ______ REQUESTED BY ______ DATE NEEDED ______

MPD No. ______ DATE ______ PULL FILE ______

OPEN FOR: PV PR (CIRC)

SEARCH FOR	CONCERNING	RESULTS
1		
2		
3		
4		
5		

Mail Run

The mail run effects the daily delivery of MPD mail to various offices and courtrooms in the county courthouse. Items are not posted, but are hand-carried by an MPD staff member assigned by rotating shift. The errand can take 20 to 45 minutes, depending on the amount and nature of mail/service on a particular day. Despite its seemingly menial nature, this task is a necessary one in that it provides the needed advance access to several dockets and call sheets.

Procedure.

The mail runner commences his assignment *no later* than 4:10 p.m. By 4 p.m., all papers, motions, letters, reports, etc., have been deposited in the office mail slot marked "papers for Court" (separate from "County Mail," which is handled by another system). The runner first quickly examines the contents of the slot to determine if there is any matter that requires additional instruction. Hopefully, there are notes attached to any papers whose delivery isn't self-explanatory.

The next step involved is the Xeroxing of the Butte/JDH phone-in and transport lists for the next day. These lists are posted on the bulletin board in the Trial Assistant's room. Copies of the three lists (one each of the Butte and JDH transport orders and seven of the Butte phone-in list) are made in the office, with a single copy of each left with the MPD receptionist.

The regular stops on the mail run are as follows, and, with exceptions, are probably most efficiently covered by top to bottom floors of the courthouse:

702 Chief Criminal Court
720 Court-Appointed Attorney's Office
Courthouse Jail

600 District Attorney's Office
236 District Court Administration
210 Criminal Court Records
Basement Mailroom

The first stop is on the 7th floor, Room 702—Chief Criminal Court. It is here, in the Judge's outer office, that the runner picks up the next day's arraignment docket and Circuit Court "call sheet" (the latter is a list of trial cases scheduled to be assigned to judges the following morning). MPD mail in this office is in a horizontal file along the wall, and daily notices of P/T and trial dates are also included.

The runner hands to the clerk of this court the copies of the Butte and JDH lists (1, 1, and 7) for his stamp and certification. The clerk then gives the runner copies of transport orders for the recog staff, psychiatrists, and private attorneys, as well as the court lists of *all* defendants scheduled for appearances the next day. The runner then takes *all* of these lists to the courthouse jail on the 7th floor. Once admitted, he either hands them to the guard or places them in the inner office mail slot marked "Rocky Butte."

N.B., If by chance, the runner should forget to bring these lists from the MPD office, he should call the receptionist and ask her to relate the names listed so as to prepare a list for the clerk to certify.

The court-appointed attorneys' office (Room 720) is directly on the way back from the jail, and here the runner simply removes the pink affidavits of indigency and attorney appointment from the file atop the wall cabinet.

The District Attorney's Office (Room 600) is the next stop, and it is here in 702 that the bulk of the MPD mail is directed. Letters for various D.A.'s are left here with the receptionist by the runner, and she will provide him with any police reports, notices, forms, etc., in return. The runner may accept service for police reports by signing the proffered form.

The service of Circuit and District Court motions is also accepted here by the DA, and is accomplished by the runner's request for a deputy (or specific DA by name, if so directed by the MPD attorney) to do this. Once the D.A. comes to the front desk, he will sign the service copy attached to the original of the motion, which is then filed by the runner in 210. The DA will retain the certified true copy for his office. The service form should be returned to the MPD attorney to inform him of the fact and circumstances of service.

The next regular stop is District Court Administration (Room 236). It is here that the runner receives the "call sheet" for District Court trials, the last of the three important items to be picked up. District Court subpoenas are also filed with clerks here, as are served originals of District Court motions. Notice of District Court trials are also found here, in a counter file marked "Public Defender".

At the next stop (Room 210—Criminal Court Records), the runner checks the MPD slot in the counter mailbox, and files the originals of any Circuit Court motions (already served on DA) in the "incoming" box, likewise on the front counter. Originals of served Circuit Court subpoenas are also filed in this box.

The basement mailroom is the last stop, and the MPD slot here contains assorted office mail from other county agencies.

The mail picked up on this errand is then returned to the office where the bulk of it is sorted by the receptionist. The runner, however, should place the Circuit Court arraignment docket and both court call lists on the appropriate clipboards in the Trial Assistant's room by 5 p.m. Police reports should also be removed and placed in the Trial Assistant's box.

If for any reason, one cannot make all stops on the mail run, he should at least:

1. Xerox and take the transport orders to 702 and then to jail.
2. Pick up the arraignment docket and call sheet in 702, and
3. Pick up the District call sheet in 236.

Stops other than these regular ones (i.e., a specific judge's courtroom, or other court office) may be necessary on a given day, but they are seldom numerous.

V. COURT PROCEEDINGS—MISDEMEANOR

Corresponding to the prior section, this next section discusses the duties of the Trial Assistant at the various proceedings in misdemeanor prosecution.

Arraignments

Arraignments on misdemeanor charges are held daily in District Court, Room 734. Each defendant is asked whether his name is spelled correctly. The charge is read to him, and he is asked whether he understands the charge. The presiding judge advises the defendant of his rights, including right to counsel.

The MPD office will be appointed if the client is found to be indigent, unless the case is primarily traffic or a conflict exists (see Procedues in Conflicts).

Currently, custody cases are called only in the afternoon, and representatives from the office are on hand after 2 p.m. to pick up cases.

Persons who have been released on bail or released on personal recognizance or merely given a citation and those who are arraigned in the morning will be sent from Court directly to the MPD office and their cases set over until that afternoon. The secretary for the Court Appointed Attorneys Office, (Room 720, Phone No. 248-3987) informs the MPD docket clerk of the appointment. When the new client visits the office, he is interviewed by an available TA or investigator, and a case file is started.

The MPD has contracted to pick up 24 cases each Friday through Thursday. Frequently, certified law students will pick up misdemeanor cases. Everything on the practical side of client representation may be new to these attorneys. Therefore, the TA should be able to short-stop in the opening minutes of any case.

At first, the case may be treated with procedural similarity. Greet the client. Explain to him the charges. Tell the client that your job is as a TA, what you will be doing for him, and what you expect of him. As TA, you will be assisting the attorney in all stages of case preparation and passing messages between attorney and client. Stress the importance that the client maintain contact with you. (There are statistically more misdemeanor clients bench-warranted than felony clients.) Of course, no definite statement can be made about what will happen, whether the case will go to trial, or whether the client will have to spend time in jail.

Prearrange to have the client call you weekly: pertinent facts about the case may be discussed, then the client can be informed of latest developments. Besides involving the client in his case, maintaining contact with him improves the overall attorney-client relationship and avoids the problem of trying to locate a client. Of course, log each conversation in the case file.

Prepare a "Demand for Reciprocal Discovery" for the attorney's signature. It should be given to the DA in court. In return, he will reply with a copy of the appropriate police report and a similar "Demand."

A copy of the pre-trial release interview (colored pink) is found on the defense counsel table. The pre-trial release officer's recommendation concerning release on personal recognizance is found at the bottom of the page. The presiding judge will normally follow the recommendation of the officer. In the event of a denial of release, determine the reasons. If the release is denied because of lack of verified information, the TA may be able to obtain information relating to the defendant's reliability and community ties with which the attorney can argue to have the defendant released.

Obtain client signatures on (1) "Authorization for Release of Information" always, (2) "Consent to Appearance by Certified Law Student", when appropriate, and (3) Waiver of Personal Appearance. Explain each form to him. The forms are self-explanatory and samples are included in this manual. (See Initial Interviews.)

Place the client's copy of the complaint, pre-trial release interview form, papers the client has signed, and the police report in the case file. Log all initial activities.

If the client is out on bail, the attorney may ask the Court to approve a pre-trial release interview, where one has not already been held. The attorney may ask for a bail reduction or a third-party custodial release. Routinely the case is set over for one week for further proceedings.

Upon leaving the courtroom, a misdemeanor file will be complete with the exception of the client's statement of facts and biological information.

Of great importance is the client's address and phone number or those of someone who can take messages. After obtaining these make an appointment to talk with the client in the MPD office. Interviews of non-custody clients must be done at the MPD office. If the client is in custody, the interview should be held in the jail area after the arraignment.

Post Arraignment Work

The assumption at the start of every case is that it will go to trial. The client interview should proceed with this assumption. Primary inquiry should be directed to the elements of the charge. What are the facts? Can the DA prove the allegation; that is, can the DA prove each element of the crime? What are the defenses to the charge? Finally, what are the mitigating factors?

The TA should be familiar with investigative resources and decide as soon as possible after the MPD office is appointed whether an investigative request should be prepared. Prior to preparing one, the attorney should be consulted. Early notification allows the investigator more time to comply with the request and permit first efforts while events are recent and fresh in the minds of the witnesses.

An interview with the client during the first week is vital. When the case is called for further proceedings the week following arraignment, the attorney wants to be able to enter a plea.

If a guilty plea is entered, the court will enter a sentence immediately or will ask for a presentence report. Any mitigating information should be available to the court in an effort to make the court well-disposed to the defendant. Alternatives can be a great help toward this end. "Pre-trial diversion" can sometimes be utilized, whereby the judge and DA will agree to a dismissal once certain terms of community service or therapy have been completed.

If a not-guilty plea is entered and a court trial is requested, the case will be sent down for trial before the presiding judge in Room 735. The case will probably be heard in a month. If a jury trial is requested, a date within two months will be assigned. However, if the jury is later waived, the presiding judge of the [illegible]ct Court will hear the case. In other words, once a jury trial is requested, the case is outside the control of the arraigning judge.

Special consideration is given to the trial of persons in custody by scheduling their trial as soon as possible.

The TA duties involve doing whatever needs to be done as a liaison between attorney and client in the efforts to determine the facts of the case and to prepare a defense. The relationship between TA and attorney and the duties and responsibility given the TA depend on the TA and the attorney.

Pretrial Conferences

A pretrial conference will be scheduled at the request of defense counsel. The presumption is that if the proposed sentence is agreeable, the defendant will plead guilty. Conferences normally are scheduled between 8 and 9 a.m. in chambers. The arraigning judge (if the case has not been set for jury trial), or the presiding judge (if it has), listens to the State's evidence and mitigating factors of the defense. The client does not participate in the conference; the attorney reports the proposed sentence to the client.

The tendency to make use of a pretrial conference varies with different judges. Some like the idea; others don't. those who do not use it may think that they are bound to the sentence that they proposed. In any case, the judge is not so bound.

The TA's function will be to assist in obtaining all the favorable information about the defendant to present to the judge. For example, does the defendant have a job? What other responsibilities has he? Is he faithfully complying with them? Coordination of alternatives and investigators' efforts is the TA's job.

Trial and Post-Trial

The Trial Assistant's duties during and after the trial of misdemeanor offenses are substantially the same as for felony trials. See the felony section of this manual for a discussion of these duties.

APPENDIX B

EXCERPTS FROM THE PARALEGAL MANUAL

PRISONERS' RIGHTS PROJECT (MASSACHUSETTS)

The following portions of the paralegal manual prepared by the Prisoners' Rights Project in Boston are comparable to the defender paralegal materials which appear in Appendix A. Readers interested in using paralegals in inmate legal services programs can obtain some of the texture of the paralegals' work in a prison setting from these materials. Note that the same caveats which applied to Appendix A are applicable to this one as well. It should also be noted that these materials are currently in draft form and are expected to be revised in the near future. (References to PLAP in the following text relate to a law-oriented manual used by law students at Harvard's Prisoners' Legal Assistance Project.)

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I. PRISONERS' RIGHTS PROJECT(PRP)

A. Organization of the Project

The project staff—attorneys, paraprofessionals, law students, and volunteers—is organized into six substantive areas: Institutional and Administrative Cases, Criminal Defense, Criminal Appeals, Affirmative Litigation, Parole Revocation Hearings, and Legislation and Administrative Regulations. Each area is under the overall direction and supervision of one or two attorneys, and the remainder of the Project, staff is divided among these groups.

The division of work responsibility within these groups is roughly as follows:

1. *Institutional and administrative matters.* The law students and legal assistants working in this area are assigned institutional and administrative cases by the paraprofessionals responsible for this area. These cases include medical problems, furlough applications, transfers, disciplinary and classification matters, lost property, recovery of good time and jail time credits, and other matters affecting the daily lives of individual prisoners at the institution. The paraprofessionals directly supervise the law students on a regular basis and are available to provide advice and to review their cases periodically. The attorney assigned to this area periodically reviews the case files of the law students and regularly discusses any problems in supervision with the paraprofessional. The attorney is available at all times for legal advice, if necessary.

The individuals working in this group are also responsible for defining the major institutional problems which require negotiation or, if necessary, affirmative litigation in order to properly resolve the matter to the satisfaction of our clients.

2. *Representation at parole revocation hearings.* Each month the Executive Director receives a list of all inmates who have been returned to the institutions for parole revocation hearings. Representatives from the project then interview these clients, review their files, and represent them before the parole board at the final revocation hearings. The students are closely supervised on a regular basis by the Executive Director.

3. *Affirmative litigation.* One or two attorneys supervise this aspect of the project's operations. When a significant legal problem arises, which affects the general inmate population at one of the institutions, the attorneys define and develop the legal issues. If attempts to resolve the problem through negotiations with the appropriate state agency fail, then litigation is pursued. Law students, under the close supervision of the attorneys, conduct interviews, draft pleadings, and research and prepare memoranda on the legal issues involved in the particular case.

4. *Criminal appeals and other post conviction matters.* An attorney is directly responsible for the supervision and coordination of all criminal appeals and post conviction challenges. These cases include direct appeals, motions to withdraw guilty pleas, motions to revise and revoke sentences, motions for new trial, writs of error, petitions for Federal habeas corpus relief, and communications. These cases are initially screened by staff attorneys and, if accepted, are divided into discrete research projects for law students who research and write factual and legal memoranda, review transcripts, and draft necessary motions. The attorney carefully reviews and evaluates these research assignments on a regular basis.

5. *Criminal defense.* One attorney is assigned to supervise this area. The area includes criminal defense of individuals charged with crimes within the institutions, escapes, and assistance in removing warrants and detainers for offenses arising outside of the institution. Law students research legal aspects of the cases, draft motions, and generally assist in pretrial and trial preparation.

6. *Legislation and administrative regulations.* This area is supervised by one paraprofessional and by the Executive Director. Individuals working within this group will define legislative and administrative priorities and will draft legislation and administrative regulations for presentation to the General Court and to the appropriate administrative agencies, respectively. The project will also provide relevant legal memoranda to members of the General Court upon request. The individuals in this area will not act at any time as a lobbying agency, but will only attempt to provide detailed legal analysis of several major problem areas which could be resolved more efficaciously through legislation and regulations rather than through litigation.

II. DEPARTMENT OF CORRECTIONS

A. Downtown Staff

For detailed information on the structure and function of the DOC downtown staff, as well as an overall picture of the Massachusetts correctional system including a description of Norfolk, Concord, the forestry camps, prerelease centers, county jails, and houses of correction, see the PLAP Manual—PRISONS.

E. Access

1. *Clearance letters*. In general, clearance letters should be of the same general format as those required for Walpole. They should be sent to the Superintendent's Office. At present, clearance is granted upon receipt of the letter. If you need access to the institution before MCIF would receive the letter by mail, bring a clearance letter with you. Access and clearance problems should be referred to the Superintendent's Office.

2. *General population*. Because MCI Framingham is a minimum security institution, PRP maintains an office in the main building and access to the general population clients is relatively satisfactory. At present, there is no restriction on the hours during which PRP staff may use the office within the institution.

When a member of PRP enters MCIF, she/he does not have to submit to a search, as when one enters Walpole. You may take money into the institution to spend at the store, but you must leave a purse or satchel at the front desk. (You are also allowed to take your briefcase in with you.) If you do not want to leave anything at the front desk, consider locking it in the trunk of the car.

a. Access to *work-release clients* presents some difficulties, because they are more often than not absent from the institution during working hours. You can generally make arrangements with these clients to see them in the evening or on Saturday. If not, depending on the individual's placement and schedule, interviews at the Boston PRP office may be possible.

b. To obtain access to clients confined in *maximum security* you must go to the Deputy's office and request to see your client. If a deputy attempts to deny your request on the basis that the inmate has a private attorney, you can stress the fact that confinement in "MAX" *in itself* presents an institutional issue in which PRP is authorized to represent inmates.

c. Access to clients confined to *room lockup* also requires authorization by the deputy, and such authorization is most often *refused*. Access to clients in lockup has occasionally been obtained where PRP staff have emphasized the emergency circumstances which necessitate immediate interviews.

3. *The Awaiting Trial Unit (ATU)*. Access to clients in the ATU presents so many difficulties, that this deserves a complete section on its own. The Unit is located above the hospital, which is a building separate from the main part of the institution. The established visiting procedure for PRP staff is the same for the ATU as for access to the main building. However, some members of the staff are not aware of this fact. As a consequence, although PRP should have the freedom to go to the ATU at will, depending on who is on duty, you may be subjected to filling out a visiting form, having a deputy called, and interviewing clients with deputies nearby.

The visitation policy (i.e., not filling out visiting forms, no officer present during interviews) was settled with Superintendent [illegible]ates in March, 1975, and that can be replied upon in any discussions that you may have with the staff—particularly when the question of whether a deputy should be present comes up.

The physical facilities at the ATU are such that only one room is available for both visiting *and* client consultation. Consequently, if one is interviewing a client, and visitors come to see another inmate, the deputy who accompanies them will be present when you are conducting the interview. The only other option is to bring your client out into the hall.

In addition, some deputies on the day shift insist that the door to the visiting room be open during interviews. Their office is right across the hall. The reasoning is questionable but there are some advantages to not arguing the issue strongly, should you be confronted with the situation.

4. *Access to records at M.C.I. Framingham.*

a. *Records of sentenced prisoners* are kept in the Social Services Office in the main building. In addition to CORI regulation requirements, the Social Service Office requires 24-hour notice to the client's social worker to enable him/her to go through the records and remove all evaluative material. Some of the more cooperative social workers often dispense with this requirement, but don't count on this happening. Our policy is to go over the records in the presence of the client whenever possible, because she/he can be helpful in providing additional information and because often the client will not have seen the record previously.

b. Current *court date and outstanding warrant information*, and *sentence data* for sentenced prisoners is kept by the records clerk. Similar information for *awaiting trial inmates* is kept at the Awaiting Trial Unit Office.

5. *Access by telephone.*

a. *General population.* During the hours that the Social Workers are on duty, you can call the Social Worker assigned to your client, and ask him/her to have your client return the call. If your client does not call back within a reasonable length of time, call the social worker again.

If you need to contact your client at night or on a weekend, call the deputy and stress the circumstances which make immediate attorney-client communication imperative (i.e., upcoming trial, hearing, etc.).

b. *Awaiting Trial Unit.* Call the Awaiting Trial Unit and identify yourself. Then ask to speak to your client. Since the ATU deals with the problem of inadequate telephone service by severely limiting the amount of phone calls inmates will be allowed to accept, check with the inmates from time to time to make sure your calls are not being counted in the weekly limit.

F. Sentencing

Many clients have difficulties with sentencing (computation of parole eligibility and wrap-up dates), usually involving discrepancies between their figures and those of the DOC or the Parole Office. The PLAP Manual has an extensive section on sentencing that deals comprehensively with almost any situation you might encounter. Read all of the PLAP section, as well as the supplement to that section which follows, before attempting to straighten out a sentence.

All computations related to sentencing are handled at Walpole by the Chief Clerk. He is the first person to contact when there is a question regarding a client's sentence. In cases where there is a problem, his information can be checked against that of the clerk in the sentencing court. Always compute the sentencing dates yourself to make sure the Clerk at Walpole has not made an error.

At MCI Framingham, all computations related to sentencing of general population business are handled by the Records Clerk. She is the person to contact when a sentenced client has questions regarding her/his sentence. If the question concerns a client in the awaiting trial unit, first contact the corrections officer on duty at the ATU.

1. *Industrial and time.* The most recent addition to MGL Ch 127 §129 is *Section D* which provides for a deduction of 7½ days per month for inmates who work and or/participate in rehabilitative programs. Until recently these deductions were not being granted.However, as of May 1, 1975, inmates involved in programs as defined in the statute are to be credited with that extra time.

As part of the process of implementing MGL Ch 127 §129D. All inmates who were incarcerated for some period of time between October 1, 1973 and May 1, 1975, will automatically receive the 7½ days per month deduction regardless of whether they participated in any programs. For those who were incarcerated for the entire period of time, this will come to 143 days. For Walpole inmates, the time is to be deducted from both the maximum and the minimum sentence. In that way it affects both the wrap-up and parole eligibility dates for each individual. An exception is made only if, after deducting the time from the minimum, an inmate would spend less time incarcerated than is statutorily demanded for a specific type of offense. (e.g. A person convicted of a violent crime must serve at least two years of his sentence.)

It was unclear from the new section whether returned parole violators would have the industrial good time deductions withheld for the first 6 months after their return to the institution as called for in MGL Ch 127 §129. The DOC Attorney Robert Bell made a policy decision in the beginning of May that the time should not be forfeited or withheld from parole violators. The basis for this decision is found in MGL 127 § 129 which states that parole violators lose standard good time deductions, not earned deductions. The Attorney General's Opinion of October 10, 1967 substantiates that decision.

2. "*Henschal Decision*". The SJC recently decided in the Henschal case that when an inmate receives more than one on-and-after sentence, that unless specified otherwise, all on-and-after sentences are to be served concurrently. This will affect parole eligibility and the parole board is seeking a way to circumvent the decision.

3. *Outline for time computation.* Brief outline for time computation if the inmate has been paroled and revoked:

a. Effective date of sentence + maximum sentence = MAX
b. Wrap-up + dead time = adjusted MAX
c. Effective date of sentence to parole date + return date to adjust MAX date × 150 days per years (12½ days per month) = earned good time

d. Adjust MAX = earned good time = good conduct date (GCD) or wrap-up date

G. Appeals

The Appeals Section of PRP handles the problems which result from a criminal conviction. The attorneys and law students in this department are involved with the following problems:

- Appeal of Conviction
- Writ of Error
- Appeal of Sentence
- Motion for a New Trial
- Motion to Withdraw the Guilty Plea
- Petition for Federal Habeas Corpus
- Motion to Revise and Revoke the Sentence
- Federal Motion to Vacate the Sentence
- Commutation
- Pardon

Because of limited staff and resources, PRP is unable to handle the cases of everyone who contacts us. Thus, the following procedure is followed in deciding which cases can be taken on:

- A law student or attorney conducts an intake interview with the inmate to determine what type of assistance s/he needs, what has transpired in earlier proceedings, etc.
- The intake interviewer will then speak with the attorney(s) who handled the case at the time of conviction.
- S/he will then make an investigation of his/her own to gather any needed information, such as exact court dates, previous transcripts, etc.
- Once the first three steps are completed, the Appeals attorney and one other staff attorney will discuss the case, and decide whether our agency will be able to take on the case. Should a situation arise where there are conflicting views as to whether a particular case should be handled by our agency, a third staff attorney's opinion is solicited.

In the event that the case is accepted, the appeals attorney, assisted by law students, will be listed as the attorney of record, and the Appeals Section of our office begins actual work on the individual's case.

For further questions regarding appeals, see the PLAP Manual's extensive section on the problem.

1. *Appeal of conviction.* An appeal of a conviction may go before the Appeals Court or the Supreme Judicial Court. This motion must be filed *within 20 days* after the conviction. After the 20 day period is over, the attorney would have to file a motion requesting that he be allowed to file a late appeal.

The Appeals Court "screens" their cases, sending those it considers to be of a serious nature to the Supreme Judicial Court. Capital cases almost routinely go directly to the Supreme Judicial Court.

2. *Writ of error.* An appeal of the conviction is usually filed along with a writ of errors. In this writ, the attorney claims that certain "errors" were made during the individual's trial which were of such a grievous nature as to contribute to the individual's conviction. Such errors may include:

- Procedural or other types of rulings made by the judge which were contrary to law.
- Verdicts clearly contrary to the evidence presented at trial.
- Constitutional violations of a defendant's rights.

3. *Appeal of sentence.* An appeal of the sentence is heard by the Appellate Division of the Superior Court. It must be filed *within 10 days* after sentencing. A case requiring this action would be one in which the defendant feels that s/he has received an exceptionally harsh sentence. Various factors may be involved, such as:

- The person's age at the time of conviction.
- His/her previous record.
- The severity of the crime, etc.

This appeal may sometimes work against the client's interests, as the Appellate Division has the power to *increase* as well as decrease an individual's sentence. Therefore, discretion is the key word to be used in filing an Appeal of Sentence.

4. *Motion for a new trial.* A successful motion for a new trial is similar, in its results, to a successful appeal of conviction, in that the original conviction is overturned and the individual is granted a new trial. This motion is presented to the *original* trial court and is based upon factors which differ from those considered for an appeal of conviction (i.e., the discovery of new evidence (post-conviction), may be grounds for a new trial.) A motion for a new trial may be filed at any time.

5. *Withdrawal of guilty plea.* If an individual has not gone to trial but has instead pled guilty, s/he may have the opportunity to withdraw such a plea if certain constitutionally prescribed questions were not asked by the court at the time that the court accepted the individual's guilty plea. The person must be questioned thoroughly, and it must be firmly established that the individual is

entering the guilty plea voluntarily. In order to establish a voluntary guilty plea an attorney must:

- Ask the individual if s/he is aware of the mandatory minimum and maximum terms of imprisonment that s/he may be subject to.
- Tell his/her client what the District Attorney's recommendation is as to sentencing.
- Explain that the District Attorney's recommendation is *not* binding upon the Court. What this means is that the Judge need not consider the District Attorney's recommendations, and that s/he may very well set his/her own sentence.

A motion to withdraw a guilty plea must be filed *within 60 days* after the time of the Plea.

6. *Federal Habeas Corpus.* A Federal Habeas Corpus is, under normal circumstances, available to a state prisoner only after s/he has exhausted all conceivable State remedies. Such an action must be based upon an alleged deprivation of federal "constitutional" rights.

7. *A motion to revise and revoke a sentence.* This motion goes before the trial judge. It must be filed *within 60 days* after the day that the client is sentenced.

8. *Federal motion to vacate sentence.* This motion is sought when the usual appeal time granted in Federal cases has passed. It could involve the following:

- Seeking an appeal.
- A motion for a new trial.
- A motion to withdraw a guilty plea. It can be based upon *any* grounds. This motion must be brought before the court which originally sentenced the client.

9. *Pardon.* When a former inmate is out of prison, he has the option of requesting that his crime be removed from the state's criminal records. A former inmate would petition directly to the governor, who has the ability to grant a pardon.

Pardons are also available to present inmates and those under criminal charges. There is no time limit.

10. *Commutation.* In this case, a prisoner requests that the governor reduce his sentence. Commutations are most often sought by an individual who is serving a life sentence.

H. Warrants

The PLAP manual has a complete section on warrants including the mechanics of disposing of both a "mittimus for not recognizing," and an outstanding warrant. All the information and advice PLAP offers is valid for our office with the exception of instruction on representation of a client in court. Since we cannot represent inmates, our responsibility instead is to aid the inmate in the application for a speedy trial (as outlined in PLAP), and contact the Deputy Commissioner for Institutional Services to make certain that the application has been sent to the relevant court. As it says in PLAP, you may also want to help the court appointed attorney by providing whatever information you have gathered on the warrant.

I. Rendition

Rendition is the process through which our state seeks to obtain an inmate for criminal prosecution detained in another state. The PLAP Manual section on Rendition is quite thorough.

K. Classification Argument

1. The Classification Argument
2. Reception Diagnostic Center
3. Intra-Institutional Classification
   a. Intra-Institutional Classification Committee
   b. Intra-Institutional Transfer
      (1) Maximum to Minimum
      (2) Minimum to Maximum
   c. Furlough
4. Inter-Institutional Boards-Transfer
   a. Community Based Board
   b. Inter-Institutional Board
   c. Lower Custody Transfer
   d. Higher Custody Transfer
5. Out-of-State Transfer
6. Transfer from State to Federal prison
7. Transfer to a House of Correction

The elements of the above outline are discussed in detail in the following.

1. *The Classification argument.* Perhaps our most important function in the classification process is counseling the inmate about the institutional system s/he is a part of. The Massachusetts Correctional System is based on a behavior modification approach which involves rewarding the inmate for "good conduct," in the form of moves from higher custody to lower custody institutions (i.e., for men: Walpole maximum to Walpole minimum to Norfolk, to prerelease, and parole). A "good" inmate is one who manifests a respect for authority, an attitude of penitence for the crime, and a desire to "rehabilitate" himself/herself. This "positive" attitude is proven to a classification board by program involvement, lack of insti-

tutional infractions, and association with other inmates who have proven their institutional reliability.

In order to clarify areas in which your client may be having difficulties in transferring to a lower custody institution, you should discuss what his/her relations are with the institutional staff, particularly the guards. Run through a typical day with him/her, attempting to pinpoint what relations or actions are now or will in the future jam up a move to a lower custody status. Once the inmate has a clear picture of the mental framework of the staff and his/her position in that structure, it will be up to him/her to decide if s/he wishes to play the game or reject it and deal with the consequences.

Whether an inmate is facing possible transfer to a higher custody status or seeking parole or a move to pre-release center, you and/or the inmate will be preparing the *classification argument* to present to the appropriate board.

The "argument" is primarily a positive presentation of the inmate's character, motivations and behavior. As stated above, the boards are interested in two general areas: the inmate's disciplinary record at the present institution and during prior periods of incarceration, and his/her involvement in rehabilitative programs inside or out of the institution. You and the inmate will basically exercise simple common sense in deciding what areas or experiences in the inmate's history to stress or play down in the argument.

The first step in preparing the argument is to examine the inmate's classification or institutional file. (If the CORI board continues to forbid paralegal examination of CORI information, you'll have to have a law student look at the file for you.) Read the file thoroughly, getting a feel for your client's entire institutional record.

A major concern to most boards is the inmate's disciplinary record. To be able to counter any disciplinary arguments the board might make, familiarize yourself with all reports. Speak with the inmate about possible extenuating circumstances and look for patterns in the reports (e.g., one particular guard who has a gripe with your inmate may be responsible for many of the reports). (See DISCIPLINE.)

In conjunction with this, be aware of all prior arrests: again, you may find a pattern to them that will be helpful to your client's case (e.g., if all the arrests are drug related you can argue that the person could benefit from involvement in a drug program not available at the present place of incarceration.)

The crux of a classification argument is a general characteristic most clearly defined as "attitude." On a concrete level, the board evaluates this in terms of rehabilitative programs: the number and quality of activities the inmate is involved in. (Inmate run programs tend to have less credibility with the boards than others.) More difficult to document is the board's interest in associations the inmate has made with other inmates and what kinds of relations s/he has developed with guards and institutional staff.

You will therefore want to make note of all programs in which the inmate is or has been involved. Any persons in a supervisory authority at the institution (including caseworkers, teachers, guards administrators, etc.) who the inmate feels would write positively of him/her should be contacted by you, or preferably, the inmate. The person will fill a report form and should be asked to return it when completed to you or the inmate. (This last point must be stressed—an inmate may feel that a person's recommendation will be positive, the report is handed to the caseworker, and it is not until the hearing that the inmate discovers that the report is detrimental to his/her case.)

Secondly, clergy, therapists, teachers, etc. outside the institutions should be contacted, particularly in the situation where transfer outside the institution is being considered. You should outline the kind of information you wish the person to include in the recommendation, including: type of association with the inmate, duration of his/her involvement, positive evaluation of character, work, etc. Ask that the letter be sent to you and send a copy to the inmate and the appropriate board.

Using the recommendations and the information you have gathered from the file, you and the client should discuss strategy for the hearing. In general, you will want to de-emphasize any disciplinary problems, and stress the growth, maturity, and changes your client has made, showing that a less restrictive environment is most appropriate for his/her needs. Try to second guess the board's strategy so you can enter the hearing prepared to rebut whatever negative comments they may make. If you cannot represent the inmate, first speak to the caseworker outlining the presentation you have developed and then put the argument in writing so the client may refer to it during the hearing.

2. *Reception Diagnostic Center (RDC).* The RDC is located within the walls of MCI Norfolk, although it is a separate unit within itself.

a. *Purpose of RDC.* The RDC is responsible for classifying male inmates who enter the State Correctional System.[1] This is accomplished by what is referred to as a "Team Diagnosis" over a 4-5 week period. The "team" is composed of correctional officers, social workers, psychologists, counselors, and staff members, who together compose a recommendation on an inmate's classification. The RDC's recommendation could include any one of the following: Bridgewater, Concord, Framingham, Norfolk, Walpole, Forestry Camp, Pre-release Centers.

b. *Functioning of RDC.* Ideally, an inmate should go to RDC immediately after sentencing. However, current *practice* is that once an inmate is sentenced, he goes to Walpole, and if eligible for the RDC, his name is put on a list for eventual transfer there. At this time, the stay at Walpole can take up to 3 or 4 months, due to the lack of space at the RDC. Plans are now under way to expand the RDC facility, and therefore cut down on its backlog of cases.

There have been cases, however, where delays in an inmate's transfer to the RDC have been caused by an administrative error. The RDC should have the following material:

- The court reports
- The probation report
- The police summaries

If this information is not on file, the inmate may stay at Walpole unnecessarily. The legal assistant should check out any delays with the Superintendent of the RDC, Director of Records at Walpole, and/or the Head Social worker at the Department of Corrections. A recent practice has been to classify some inmates, at Walpole, supposedly because they are security risks. However, if an inmate is told he may be classified this way, encourage him to demand the RDC process (i.e., if he's in maximum at Walpole and is classified while there, he's more likely to remain in maximum, than if he were moved to RDC).

Once the RDC has completed its recommendation on an inmate's classification, the office of the Deputy Commissioner of Classification and Treatment at the Department of Corrections reviews it and makes the final determination. In the past, the inmate has known what the RDC recommendation will be *before* the Deputy Commissioner's office is informed. If the inmate wishes to fight the recommendation, he must file an objection with the Deputy Commission of Classification and Treatment. If the inmate manages to object before the Deputy Commissioner makes his final decision, then his case will receive further consideration. However, he can object *after* the decision, if the former option is not possible. It may be wise to ask the Deputy Commissioner to put off his decision until the inmate has filed his objections with him.

When the recommendation has been made and the Deputy Commissioner has made a decision on it, the inmate will be given an RDC classification recommendation summary. There are other more extensive reports, which are not shown to the inmate, due to their evaluative nature. These reports will be kept on file.

Since there is only one state prison for women, the evaluation of new women inmates occurs at Framingham. The standard procedure is that after an initial 30-day period, the inmate is evaluated by the institutional classification board. The result of this meeting, called "staff," at which the inmate is present, is a job assignment (either within the institution or a recommendation for work-release eligibility).

c. *Mechanics of PRP involvement.* The considerations of the RDC "team" are similar to those of a classification board. The legal assistant may want to help the inmate prepare the classification argument, gathering letters of recommendation, etc. Any such work should be coordinated with the inmate, his caseworker, and the RDC Superintendent, if necessary.

3. *Intra-institutional classification.*

a. *Intra-institutional classification committee-(Program Review Board).* The Intra-Institutional Classification Committee is made up of representatives of each department in the institution and meets as a whole or in sub-groups (Furlough Committee, work/educational release, ⅓ parole). It conducts routine reviews of an inmate's program (work, educational, etc. See PROGRAM ASSISTANCE) but is also responsible for reviewing a person's classification and recommending transfer to a higher or lower custody status within the institution. The Committee and its functions are discussed in DOC 44001.

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[1] Inmates not classified at RDC include:

1) Parole violators who were on parole for a period of *less than one year.*

2) Escapees.

3) Inmates sentenced directly to either Bridgewater or Concord.

The Review Board meets every Monday, Wednesday, and Friday at Walpole and is chaired differently on those days. It is therefore important to find out from the caseworker on which day a person's hearing is scheduled—the different personalities of the two chairpeople (and their particular relation to the inmate) may affect the decision. The Framingham Review Board meets each Tuesday.

b. *Intra-institutional transfer.*

(1) *Maximum to minimum.*

(a) *Mechanics of transfer.* If an inmate wants to transfer to the minimum end of Walpole, his social worker (part of the "classification team") should apprise the Director of Treatment of the inmate's request. S/he in turn will evaluate the request and set a date for a hearing with the Program Review Board. The inmate may or may not be invited to the hearing, so it is up to the caseworker to present the inmate's arguments. Following the hearing, the board will make a recommendation to the superintendent who will finalize the decision.

MCI Framingham classifications to work-release status are conceptually similar to maximum-to-minimum transfers. The procedures are the same. However, there is an additional requirement that the inmate be within 18 months of parole eligibility.

(b) *PRP involvement.* Intra-institutional transfer is a process that the institution sees as exclusively its own problem and the staff is particularly resentful of "outside interference" into this domain. Therefore, our involvement in these cases should be fairly low-keyed to avoid antagonizing staff members who can reverse a positive decision if they feel "unreasonable" pressure.

Since the caseworker will be presenting the classification arguments, you will want to pressure him/her to make all necessary contacts, gather letters of recommendation, etc. to present to the board. (If it is obvious that the social worker is not gathering the information, make it clear to him/her that you regard the work as his/her responsibility and then do the work yourself. Present all positive information to the case worker and outline the strategy you have formulated with him/her.

There are cases where the review board approves a move and the superintendent vetoes the recommendation. Although on paper it is the superintendent's decision that finalizes a move, at Walpole, in actuality, it is Butterworth's influence that will transfer or not transfer a man. Therefore, after the board has met, speak to Deputy Butterworth. He may have particular information (e.g. house reports, personal knowledge) that you have not seen and that has not been disclosed to the board, but which he'll use in making his decision. Pressure him into relaying that information to you and try to rebut it with your facts. If, after speaking with Butterworth, the decision is still negative, write a letter to the superintendent appealing the decision, using all the positive information you have gathered.

(2) *Minimum to maximum.* Moves from minimum to maximum are a fairly recent development and we have just begun to represent inmates at these hearings. (At present the MCI Framingham administration still denies the right of representation at hearing which result in transfers to maximum security.)

The hearing and our approach to it is similar to that involving an inter-institutional board hearing concerning a move from a lower to a higher custody institution. However, in an intra-institutional hearing, the caseworker plays a more important role and there is more than usual interest in house officer's reports, teachers' reports, supervisors' comments, and the inmate's associations with other inmates.

At the beginning of the hearing the caseworker will present the inmate's case, running down the inmate's activities, institutional reports, and infractions. The board will then question the inmate on any/all areas relating to the inmate's record. Finally, it will ask the representative if s/he has any comments to add to the discussion.

Our representation will involve presenting the classification argument, and any extenuating factors. (See CLASSIFICATION ARGUMENT and INTER-INSTITUTIONAL TRANSFER.)

c. *Furloughs.* Furloughs are "temporary passes" to extend "the limits of the place of confinement," issued to inmates who are evaluated as "trustworthy" by the Department of Correction and the institutional administration. The DOC's order 4670.1A, concerning furlough regulations was made effective May 28, 1975. All previous conditions set forth in D.O. 4670.1 are now null and void.

The new regulations appear to leave a great deal of room for the possible exercise of administrative discretion: there are a number of sections which allow for alteration in the regulations at the institutional level by the superintendent of each MCI.

Included in this discussion is a synopsis of the salient points of D.O. 4670.1A. However, there are important exceptions to each general rule so it is imperative that you read the regulations in their entirety before advising an inmate on a furlough question.

(1) *Technical aspects of furlough.*

(a) *Types of furloughs.*

- *Emergency furlough*—Granted for a serious, usually personal reason, which requires the inmate's immediate presence in the community.
- *Emergency furlough under escort*—Granted to an inmate who's not considered and therefore needs supervision while he's in the community.
- Furlough—Any furlough issued for other than "emergency" reasons.

(b) *Acceptable furlough plans.*

- Attending the funeral of a relative.
- Visiting a critically ill relative.
- Seeking medical, psychiatric, psychological or other social services that are not available in the facility.
- Contacting prospective employers.
- Securing residence for parole or discharge.
- Any other reason "consistent with the reintegration of a committed offender into the community."

(c) *Time.*

- *Furlough day*—24 hours or 48 half-hour periods.
- *Furlough Year*—Begins from the date of final approval of an initial furlough and ends 12 months later. Each additional furlough year begins on the anniversary of the final approval of the first furlough.

Once an inmate is cleared for furlough, s/he is eligible for 14 furlough days per furlough year, but s/he cannot receive more than 7 of those days in the first half of the year. If s/he has furlough time remaining after the first half of the year, that time can be carried into the next half, but not from one furlough year to the next.

If an individual returns to the institution on a parole violation or a new sentence within his/her furlough year, s/he is eligible to make use of the unused furlough days within that year.

(d) *Eligibility.*

- *First Degree lifers*—must serve five years from the effective date of sentence, except for emergency furloughs, under escort.
- *Lifers*—must serve three years from the effective date of sentence with the same exception as above.
- *Inmates whose initial commitment is within 18 months of parole eligibility*—immediately eligible (but may be revised by superintendent, e.g. at MCI Framingham, an inmate is not eligible for a furlough until s/he has served 30 days.)
- *All other inmates*—must serve 20 percent of the time between effective date of sentence and the parole eligibility date, but no more than 3 years, except for emergency furloughs under escort. (See the *Furlough Eligibility Time Schedule* in Appendix A.)

(e) *Denial.* An inmate can make another furlough application immediately after a denial, but it won't be considered by the committee for at least 30 days.

(f) *Conditions of furlough.* The rules concerning tardiness in returning to the institution are extremely stringent and inflexible. The inmate should be well aware of the particulars of the "contract" before he/she leaves.

(2) *Procedure for seeking a furlough.*

(a) When an inmate becomes eligible for a furlough, s/he should ask his/her case manager, furlough coordinator or the institutional furlough office for a furlough application. (See D.O. 4670.1A for copy of the form.)

(b) The inmate should submit the completed application along with any relevant reports, recommendations, etc., to the furlough coordinator. All materials and information must be in writing and signed and dated by the appropriate individuals.

(c) After checking for detainers, SDP clearance, and verifying other information, the coordinator sends the inmate's application, furlough authorization sheet, and all relevant data to the superintendent and the Furlough Committee.

(d) The Furlough Committee, a classification committee composed of 3 to 5 staff members designated by the superintendent, will review the application and the additional material, and interview the inmate.

(e) The Committee then will evaluate the application and approve, disapprove, or defer the ap-

Furlough Eligibility Time Schedule

Minimum Sentence		*Time to P.E.* Date*	*Time to F.E.** Date*	*Time to P.E.* Date*	*Time to F.E.** Date*
(Years)	*(Months)*	*(1/3 Offender) Months*	*(1/3 Offender) Months 1/10 equals 3 days*	*(2/3 Offender) Months*	*(2/3 Offender) Months 1/10 equals 3 days*
1	12	4	0	0	1.6
2	24	8	0	0	3.2
3	36	12	0	24	4.8
4	48	16	0	32	6.4
5	60	20	4.0	40	8.0
6	72	24	4.8	48	9.6
7	84	28	5.6	56	11.2
8	96	32	6.4	64	12.8
9	108	36	7.2	72	14.4
10	120	40	8.0	80	16.0
11	132	44	8.8	88	17.6
12	144	48	9.6	96	19.2
13	156	52	10.4	104	20.8
14	168	56	11.2	112	22.4
15	180	60	12.0	120	24.0
16	192	64	12.8	128	25.6
17	204	68	13.6	136	27.2
18	216	72	14.4	144	28.8
19	228	76	15.2	152	30.4
20	240	80	16.0	160	32.0
21	252	84	16.8	168	33.6
22	264	88	17.6	176	35.2
23	276	92	18.4	184	36
24	288	96	19.2	192	36
25	300	100	20.0	200	36
26	312	104	20.8	208	36
27	324	108	21.6	216	36
28	336	112	22.4	224	36
29	348	116	23.2	232	36
30	360	120	24.0	240	36

* P.E. Parole Eligibility   **F.E. Furlough Eligibility (20% of time from effective date of sentence until P.E.)

plication for certification. The committee is required to inform, in writing, the superintendent, furlough coordinator, and the resident of its recommendation, *with reasons* for its decision.

(f) Supposedly all furlough requests are to be reviewed by the security Management Team, a DOC board, headed by Higgins. However, generally this team reviews cases where, due to informant information or other factors, the person is considered a security risk.

(g) The application, additional material and the evaluation then go to the superintendent for review. He makes the final decision to approve or disapprove of a furlough and notifies the resident and furlough coordinator of his decision in writing.

(h) In the case of a "special offender" (see REGULATIONS), or if the certification sheet for another reason needs further approval, the request is forwarded to the Commissioner. He has the power to revoke the certification of any resident. He must notify, in writing, the superintendent, furlough coordinator, and resident of his decision, *with reasons.*

(3) *PRP involvement in furlough problems.*

(a) *Aiding inmate applying for furloughs.*

(1) *Interview questions:*

Has your client contacted anyone to request an application for furlough? Who? When? By what means (i.e. written request, oral request)?

What is your client's effective date of sentence and parole eligibility date? Is your client eligible (timewise) for a furlough?

Is your client a "special offender," "first degree lifer," or a "lifer"?

Has your client ever been approved for a furlough before? When? Did the furlough release ever take place? Were there any problems? What type of furlough was it?

Does your client have any cases pending?

(2) *Letters of recommendation.* In addition to this information, you should get names, addresses and/or telephone numbers of people who would be willing to write letters of recommendation for your client. Contact these people, if your client can, and request their help, giving them some guidelines for the content of their recommendations. (See CLASSIFICATION ARGUMENT.) Have all these letters sent to you and write one of your own, offering an evaluation of the person's eligibility, institutional record, (if good), and any positive observations you have of the person's character, etc. All materials should be copied and then sent to the Furlough Coordinator.

(3) *The application.* If your client has requested but not received a furlough application, speak to his/her caseworker to find out any reason for withholding the form.

(4) *Follow-up.* Once the application and all additional materials have been sent to the furlough coordinator, wait a reasonable amount of time (a week or so), and then check to see if s/he has been scheduled to see the next furlough committee sitting at the institution. If the person has not been scheduled, contact the appropriate furlough officer.

(b) *Aiding an inmate denied furlough.* If the client's application is rejected, find out:

(1) From what level the denial originated.

(2) What reasons were given? Are they legitimate?

(3) Are there any "hardship" factors involved that you could use to appeal the decision?

(4) What type of bail was set on your client during his/her pending trial? (This question is relevant where the inmate has been denied furlough because of pending cases incurred while s/he was on the streets. If low bail was set while the inmate was on the streets, it is an indication of the judge's belief that the inmate will not flee because of the pending cases, and this judicial determination should be taken into account in a furlough decision.)

Since furloughs are not considered a legal right, the regulations do not allow for appeals for the furlough decision. However, you should write a letter, which serves as an appeal, for the client's record. Address the letter to the person who heads whatever level of authority denied your client, and state: reasons for the furlough request, all positive information you have gathered about the inmate, and of course, refutations of their reasons for denials. (If the reasons seem vague or unfounded, press the furlough coordinator in person to clarify the issues.) Attach copies of the letters of recommendation you received and send this "appeal package" to the furlough coordinator, superintendent, and commissioner.

4. *Inter-institutional boards-transfer.*

a. *Community based board.* An inmate seeking transfer to a community-based facility (Pre-release center, forestry camp or MCI Framingham), must first be reviewed by the intra-institutional classification committee and then must have a hearing with the Community Based Board. (C-Board.) (D.O. 4400.1 provides regulations for the transfer process and the PLAP manual discusses the make-up and functioning of the C-Board in CLASSIFICATION, pp. 12-13.) If he is facing possible transfer *from* a C-based facility, the director of the program can arrange for a C-Board hearing. At the present time, an inmate at Walpole can transfer to a community based program only from the minimum section. It is possible that the behavior modification policy will be further solidified by the DOC to the extent that inmates will have to transfer to Norfolk before being eligible for C-based programs.

Eligibility requirements for the Pre-release centers and Framingham are discussed in the PLAP manual (see PRISONS, p. 30). The Forestry or Prison Camps, Monroe, Warwick, and Plymouth have particular eligibility requirements: a man has to have more than six months but less than two and a half years to serve before his p.e. date, he cannot be a sex offender, a first degree lifer, or a second degree lifer with less than 12 years of incarceration. If he is found guilty of a d-report, he will have to wait three months before acceptance into a camp. (For more information on programs available at pre release centers and Forestry camps, see the releases from DOC Community Services in our file, as well as our resource manual on programs.)

b. *Inter-institutional board.* An inmate facing transfer between any of the state prisons: Concord, Bridgewater, Walpole, or Norfolk, will be reviewed first by the intra-institutional classification committee and then will have a hearing with the Inter-Institutional board (I-board). The board's structure is discussed both in PLAP (CLASSIFICATION, p. 13) and D.O. 4400.1, 114.5.

c. *Lower custody transfer.* Our involvement with an inmate seeking transfer to a community based facility or a lower custody institution is basically the same as our aid to an inmate seeking parole. First, the case worker should be contacted to find out if s/he has forwarded the inmate's request to see the Intra-Institutional Classification Committee (which will then recommend that the case be heard by the C-Board or I-Board.) The person's record should be examined to see if there are outstanding warrants or if the man (due to previous and present offenses) has to face SDP clearance. Although an outstanding warrant will usually be cause enough to deny a transfer, if there are valid reasons why a warrant can't be disposed of, the board might make an exception (e.g. an out-of-state warrant) so you should not let the presence of such a warrant deter your efforts toward proceeding with the request.

The bulk of your work will be helping to prepare the "classification argument." This will include gathering letters of recommendation or oral testimony from people in the institution and/or community, evidence corroborating the inmate's special problems or needs, and basically any positive information concerning the inmate's record in or out of prison. (See PLAP manual on CLASSIFICATION and PRP manual on CLASSIFICATION ARGUMENT.) Much of the information should be compiled by the social worker: make it clear to the case worker that you consider it to be his/her responsibility but continue to gather the information yourself. Once you have helped the inmate prepare his/her case, type up the arguments for him, both so he will have notes to refer to in the meeting and so his arguments can be put (after the hearing) into his permanent file.

If the inmate's request is denied at the hearing, he should ask that the denial be a "limited setoff" making it clear that he wishes to be reviewed again shortly. The board will be more likely to grant this request if there is a particular educational or work program that will require the inmate's presence within a certain time. If they agree to review him again, the interim time will probably be seen as a probationary period, during which he must continue his good conduct.

d. *Higher custody transfer.* The superintendent of the institution or the program director of a C-Based program may recommend to the Deputy Commissioner in Charge of Classification and Treatment that a particular client be reviewed for transfer. The Deputy will then contact the chair of the original C-Board or I-Board in order to organize a hearing on the transfer. Because this involves the possible move to a higher custody status, the client has a right to representation and PRP will act as counsel in this situation. Read the PLAP Manual section CLASSIFICATION—Transfer to a Higher Custody Status, p. 15, the CLASSIFIED ARGUMENT in our Manual and DOC 4400.1 and 4400.2 before you begin to research for representation at a hearing.

The board views its decision in terms of "treatment" not punishment: classification to a higher custody status is an antidote for a maladjusted inmate. In their eyes, by sending an inmate back to higher custody, he will be presented with fewer challenges, he will have time to think about how he should correct his behavior patterns and be able to earn his way into a less restrictive environment. The Board members attitudes are highly paternalistic: they reward an inmate for good behavior and "treat" him for bad behavior. You must show how your client has adapted well to his less restrictive environment, and has benefited, matured, and for the most part, done his time there well.

Helpful points to make during a presentation may be the extenuating circumstances relating to the particular disciplinary violation (distinguish it from other d-tickets) and/or the positive aspects of his institutional record.

You may discover that, in consideration of 4400.1 and 4400.2, your client has possible grounds for charging the board with denial of due process. However, they will never be terribly impressed by your technical arguments, and it may even alienate them against you and your client. Therefore, whenever possible, indicate why the failure to follow their own guidelines has handicapped your client and prevented him from being able to make a valid/fair/relevant presentation in his own behalf. For example, if your client has received 24-hour notice instead of the prescribed 72-hour notice, this severely shortens the amount of time he will have to prepare his case (get recommendations, etc.) or find someone to be his legal representative; or, if he has received notice but the specific reason for the convening of the board was not given, then he will not be prepared to speak on the precise issue to which the board will be directing itself.

If you lose your hearing: APPEAL. Even if you're convinced the attempt will be fruitless, the appeal will be placed on the inmate's permanent record and will at least attest to the fact that the Board's assumptions and final decision were challenged. The appeal must be submitted within five working days of the day of the hearing and should be addressed to the Deputy Commissioner in charge of Classifications and Treatment. In the appeal, you may state objections to both the conduct of the hearing and the decision of the Board, including any letters of recommendation or other documentation that might affect the decision. If you feel there has been an unusually blatant denial of due process or that their decision may affect your client particularly adversely, you may want to hand deliver the appeal and speak to the Deputy Commissioner in person. It is wise not to employ this tactic too frequently, as it may undermine its effectiveness.

5. *Out-of-State transfer.* Massachusetts is a member of the New England Interstate Corrections Compact (MGL Ch. 125 app. § 1-1 et seq.), and as such contracts for transfer are specifically provided for to Maine, New Hampshire, Vermont, Connecticut, and Rhode Island. While there are no specific statute provisions for making compacts with states outside New England, there are statutory provisions that imply it is acceptable. (MGL Ch 124 § 1m, MGL Ch 125 Art. IX.)

a. *New England Interstate Corrections Compact.* Article I of the N.E. compact states that the purpose of the agreement is:

> To provide for the mutual development and execution or programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the *most economical* use of human and material resources.

To implement the "cooperation," the compact provides for a contract to be drawn up between the two interested states. Included in the provisions of the contract should be those stipulating:

- The payments to be made by the sending state for "inmate maintenance and extraordinary medical and dental expenses."
- The plans for delivery and retaking of the inmate.
- Conditions for inmate participation in employment programs—disposition of funds accrued by inmate.

Although MGL Ch. 125 app. § 1-1 et seq. should be read in its entirety, other important clauses stipulate:

- An inmate has all legal rights in the receiving state that s/he would have had in the sending state (Article IV, sec. e).
- An inmate is entitled to receive any hearing s/he would have been afforded in the sending state while s/he is in the receiving state. The hearings may be conducted by authorities from the sending state, or if authorized, by those from the receiving state. Any decision must be finalized by the sending state. (Ibid., sec. f)
- When the inmate wraps up or is paroled, s/he should be released in the sending state, which is responsible for financing the trip back.
- Anyone entitled, under sending state laws, to for or advise the inmate, can continue to do so in the receiving state.

b. *Transfer to states outside compact.* As stated earlier, there are no statutes forbidding transfer to states outside of New England and by implication it is acceptable. Basically, procedures and regulations regarding these transfers will be similar to those involving N.E. states, although completion of the transfer may be more difficult.

c. *Procedures for applying for transfer.* There are no special departmental regulations governing out-of-state transfer. However, it is clearly the responsibility of the sending state to initiate transfer proceedings, although the DOC and the institution may try to convince you otherwise.

The inmate should first write to the superintendent of the sending institution, explaining his/her reasons for wanting to transfer. At the same time s/he should, through her/his caseworker, notify the Director of Treatment, and ask to have a hearing with The Program Review Board. The superintendent, using the information from the hearing, and the person's file, should make a recommendation to the Commissioner who in turn would send his recommendation (records, etc.) to the proposed receiving state. In actuality, however, it is the Deputy Commissioner in charge of Classification and Treatment who will review the file and recommend an evaluation by the Superboard—the Commissioner will probably act as more of a rubber stamp to their decision. (See *DSU* Superboard.) If a male inmate has been sentenced on a sex offense, he will have to be cleared of the SDP status before the DOC will make any moves toward a transfer out-of-state.

The inmate should also write to the superintendent of the institution s/he wishes to transfer to. Once the out-of-state authorities have recieved the information from the sending state, they can make a preliminary decision and perhaps begin to work out a contract. The contract must finally be approved by the governor.

Although the N.E. compact mentions rehabilitative considerations, the primary concern for any transfer on both sides is economic. Since the sending state must pay for any transportation and maintenance, it is not likely to approve of a move unless the receiving state reciprocates (i.e. arranges a "swap" of inmates). A second consideration is the size of the prison population —since most of the institutions are overcrowded, the receiving state is unlikely to take on another inmate unless they can move another out. On the other hand, if a prison is holding fewer prisoners than its quota, and as such is threatened with financial cuts, it is not likely to want to transfer inmates out without replacements.

Due to these considerations, most transfers seem a result of contacts—either the inmate has connections on the outside, or the receiving institution will accept due to favors owed to someone on the sending end.

d). *PRP involvement in out-of-state transfers.* Although the decision to move an inmate seems arbitrary or dependent on factors unrelated to his/her particular case, s/he should offer the board and the respective superintendent compelling reasons for the need to be elsewhere. Possible factors for necessitating a transfer include:

- Threats by inmates or guards that cannot be eradicated by a move within the state.
- Special educational, therapeutic, or vocational needs which could be answered in the receiving state.
- Family considerations (illness, etc.) that require an inmate's presence.

You can aid the inmate by compiling evidence corroborating these needs/problems: letters from the family, doctor, institutional staff, etc. If the inmate needs a special program, write to the potential receiving institution to verify the existence of the special facilities. Letters should be sent to the Deputy Commissioner in Charge of Classification and Treatment and the superintendent of the receiving institution reiterating your client's points, and including your own evaluation of his/her situation, and any letters you may have gathered.

N.B. Before beginning to aid a client on a transfer, discuss thoroughly with him/her the reasons for wanting the transfer, pressing clarification on each point. There have been situations where we have become involved in pressuring the DOC to expedite the process only to discover the inmate has changed his/her mind about the move.

At the same time, pressure the DOC (specifically Joe Higgins) to transmit the necessary records and evaluations to the receiving state.

6. *Transfer from State to Federal.* A transfer from a state prison to a Federal penitentiary involves the same processes as an out-of-state transfer to a state institution. However, instead of contacting the receiving prison, you will speak with an official at the Federal Bureau of Prisons in Boston. Your arguments for this transfer will be similar to those for out-of-state, and again, the transfer will be most likely to occur if the two institutions can work out a reciprocal arrangement. The transferred prisoner would be subject to Massachusetts, not Federal laws, relating to sentence and parole eligibility. The commissioner is authorized to effect the reciprocal arrangement and draw up a contract, with the consent of the governor.

7. *Transfer to a house of correction.* When applying for transfer to a house of correction, you'll basically be seeking the approval of the Sheriff of the particular institution: the MCI and the DOC will usually go along with the desires of the house of correction. The Commissioner of Correction, of course, has final authority over the decision.

Transfer to a house of correction is probably the most difficult type of transfer to effect. Although the houses do have maximum and minimum facilities, they will not accept lifers or high security risks, because of pressure from the surrounding counties. Although you should proceed with the steps outlined in *Out-of-State Transfers*, it is unlikely that your client will be transferred unless the particular house of correction finds it in its "best interest" (i.e. there is court or political pressure on the institution or your client has influential connections.)

N.B. Women at Framingham are sometimes sent to houses of correction as punishment, since they are higher security facilities, and infrequently will request such a transfer since there is no other state facility for them. (See Harassment section.)

M. PROGRAM ASSISTANCE

Throughout the manual, particularly in sections dealing with classification or parole, reference is made to rehabilitation, and/or program involvement. Chapter 777 (Correctional Reform Act of 1972) was passed by the Massachusetts legislature in 1972, providing for the creation of rehabilitative programs, both outside and inside of the institutions. That the reform act has been less than successful is clear from the scarcity of programs at the institutions, and in fact, PRP hopes to litigate on the DOC's failure to implement the stipulated reforms. However few the programs are, as a general rule, the more programs an inmate is involved in, the more favorably his case will be viewed by the various classification boards. Since many of the programs are extremely limited (i.e. useless), inmates may seek program involvement for appearance sake only—part of the game to be played to move down (or up) the ladder that is the correctional system.

Initial recommendations for program and work involvement are made by the Classification team at RDC. This recommendation is acted upon by the institutional classification team, which consists of the inmate's case manager, supervisor, house officer, counselor, where applicable. In the case of inmates at MCIF initial recommendations and 30-day program assignments are made by the institutional classification team. If, after a period of incarceration an inmate wishes to change his/her program, s/he should advise his/her caseworker, who is responsible for notifying the Program Review Board (Intra-Institutional Board) that a review of the program is in order. The Board should then conduct a hearing and approve changes or recommendations for changes in the program plan.

The title of this section is a misnomer, since there is very little that we can do to assist an inmate with program changes, particularly within the institution. (The institution is more than usually sensitive to interference in this area.) However, the legal assistant should be familiar with the available programs and be aware of their standing with the authorities, in order to offer advice in the case of classification or parole planning.

1. *MCI Walpole*

a. *Work programs.* Walpole offers four areas for work: License plate and sign shop, printing, brush-making, and foundery. Approximately 120 men are employed in these pursuits.

b. *School programs*

(1.) *ABE*—Adult Basic Education.

(2.) *GED*—The General Education Diploma is equivalent to a high school diploma. In the maximum end, interested inmates are given the GED textbook which they study without the aid of a teacher and then take an exam.

(3.) *Pre-College courses.* Pre-College Courses, on a basic and advanced level, are offered to inmates at Walpole through the University of Massachusetts. (Approximately five are enrolled at each level during a semester.) An inmate must have a high school diploma or GED to be eligible for these courses which focus on improving reading and writing skills. As of July 1975, one teacher was available for precollege teaching.

(4). *College Courses.* For inmates who have completed precollege courses or who are deemed eligible for college level courses, University of Massachusetts offers several introductory college courses at Walpole a semester. Approximately 40 inmates and two professors are involved in college courses a semester. The credits earned for these courses are transferable if the inmate continues his education outside the prison.

c. *Counseling.* After an inmate informs his caseworker of his desire to see an individual counselor, his name will be put on a waiting list. It may be several weeks to several months before he sees a counselor.

d. *Christian Action.* Christian Action began with a religious orientation but is now more politically oriented. About 50 inmates attend the bimonthly meetings, where various issues of prison reform are discussed, often with community groups in attendance.

e. *Project Reachout.* This group is an offshoot of Christian Action. It trains a selected group of inmates to be counselors for young men who are not in prison but who have had some trouble with the law. The training lasts about eight months after which the inmate receives a certificate of qualification from the institution. As of May 1975, the program had 16 inmates and hoped to expand to 20. Its credibility with the institution and the DOC is good.

f. *Inside-Out.* Inside-Out (IO) began as a self-help program for drug offenders within the prison, but it has expanded to include non-addicts. It offers drug education classes as well as counseling, and is comprised of an "outside" staff (all ex-addicts) and an "inside" staff including members of a steering committee, facilitators, the program director, and the director of orientation (the latter two are paid).

At Walpole, the IO group sessions are the only drug counseling available. Three groups meet twice a week and inmates in minimum and maximum have separate sections.

An inmate wishing to join IO should speak to an inmate facilitator, or ask his caseworker to speak to the "outside" Program Director. The program's credibility was fairly low until a recent restructuring. It is seeking money to expand its activities and is working closely with the Deputy Superintendent in charge of programs. Basically, all applicants are accepted.

2. *Pre-release, work and educational release.* The PLAP Manual discusses eligibility requirements and the structure for seeking approval for pre-release and work and educational release. (See CLASSIFICATION pp. 8-11, p. 13, and PRISON, p. 30). At this point there is no work or educational release operating out of Walpole—an inmate must move first to Norfolk before he can be eligible for a release program. As with programs inside the prison, the inmate must speak first to his caseworker if he is interested and eligible for work or pre-release, who should arrange for a hearing with the appropriate board. (See COMMUNITY-BASED BOARD, PRP and PLAP). We can help the inmate in selecting a possible program using both our resource manual, as well as DOC Community Services Memorandum (see our file) and then follow through on any leads we, or the inmate, discover.

a. *Educational release.* The University of Massachusetts oversees the educational release and pre-release college programs. Its Campus at Boston and Bunker Hill Community College and Roxbury Community College all offer courses to inmates under a special admissions policy. The inmates (or parolees) take courses with other students, have access to all campus facilities, and receive a regular diploma upon graduation.

b. *Drug dependent inmates—pre-release.* A Task Force on Drug Dependent Inmates appointed by the Massachusetts legislature has recommended guidelines for rehabilitative pre-release programs. The guidelines, which have been put into effect at Norfolk, involve a new orientation toward pre-release for inmates with drug problems. Under the proposed structure, an inmate, who is eligible for pre-release, would first see an SB1 board. This board, comprised of inmates and institutional staff, would review the man's case and decide if the man is in fact eligible timewise and if he needs drug counselling. Their recommendation would be sent to the SB2 board. The function of this board is unclear. Ideally, it should function as a C-Board, except that its attitude toward drug offenders would be the reverse of the C-Board's traditional skepticism. However, at this point, the SB2 Board seems to be the C-Board. (See CLASSIFICATION in PRP and PLAP.)

If the SB2 board approves the man for pre-release, the recommendation will be sent to the SB3 Board, which is in charge of placing the inmate in a setting where the person can receive drug treatment. Hopefully, the SB3 board will tap resources previously closed to inmates on pre-release, and the whole process is supposedly an attempt to further implement Chapter 777. As yet, there is no indication that SB1, 2, and 3 boards are functioning at Walpole.

N. Lost or Stolen Property

Lost or stolen property is probably the most prevalent problem at M.C.I. Walpole. One of the primary reasons for this is that there are no standard procedures for logging the possessions each man has with him in the prison, and none governing transfer of those possessions from one part of the institution to another, or between institutions. At this point our office is attempting to set up such standardized procedures with the administrative assistant to the superintendent.

Thus far, lost property complaints have been handled on a case-by-case basis. This has been successful in some instances where the location of the property is known. However, for the most part where the location of the property is not known to be in the possession of the institutional authorities it is unlikely that it will be recovered.

In cases where it has clearly been determined that the item or items in question are either destroyed or no longer in the possession of the institution or the department of correction, the only recourse available is to seek financial compensation. It is in this area that there has been little or no success in the past. Even in instances where the institutional authorities agree that they are clearly responsible, the DOC has asserted that it does not have funds available to reimburse inmates for lost or destroyed property.

At the present time our office is representing Anthony and James Pina on a law suit involving lost and destroyed property. The suit we have pending is in the form of a complaint for Declaratory Relief, Equitable Relief and Damages. One of the primary issues argued in this brief is that an individual employee acting in an official capacity can be held accountable for either negligence, malicious conduct in regard to the loss, or destruction of an inmate's private possession. So far, there are very few and very limited rulings on the issue. If the suit is successful, it will set a precedent establishing the manner in which relief for other individuals might be pursued.

Although the legal issue and legal approaches to lost property problems are not as yet resolved, there are still administrative remedies available to many of these problems. Regardless of whether a case may eventually have to be litigated, we should fully document each case and exhaust every administrative remedy. At the present time, the person assuming responsibility for handling these problems at MCI Walpole is the administrative assistant to the superintendent. After a case is thoroughly documented, the complaint should be directed to him. At Framingham, the superintendent should be approached and he will indicate the proper deputy to contact.

To begin an investigation of a lost property case, you will want to obtain proof that the missing article existed. You should first construct as detailed a description of the lost article as possible. For example, if the lost article happens to be some sort of garment, the client should supply you with the following information:

Type of Garment
Style
Identifying Colors
Size
Manufacturer
Stores-Where Purchased
Person Who Purchased (Name, Address and Phone)
Approximate Date Purchased
Receipt of Purchase

Contact the store, the person who purchased, etc., to see if they can provide receipts or testimony verifying the article's existence.

The second step in documenting these cases is to prove that the item was under the care and custody of the institutional authorities. This may be done in several ways. You should first obtain written verification from the person or company that delivered the item to the institution. Then check the institutional records to ascertain if the existence of the item was recorded. The last may be done by requesting a Xerox copy of the file in the deputy superintendent's office which should list the property of the client. It is quite likely that this file will only contain a partial list. In that event, check both the client's classification file and speak with front control* to see if the item was recorded in a ledger.

O. Inmate Accounts

Under the Massachusetts General Laws, Chapter 127, §3, the Department of Corrections is charged with the care of all inmate money and property:

> They shall keep a record of all money or other property found in possession of prisoners committed to such institutions, and shall be responsible to the Commonwealth for the safekeeping and delivery of said property to said prisoners or their order on their discharge or at any time before.

Inmate monies at MCI Walpole are divided into two accounts, savings and personal. This is true of MCI Framingham as well. All inmates have access to money in their personal account (as long as funds have not been frozen for punitive reasons), but only persons who are lifers or classified as SDP have access to their savings account funds. Other inmates receive these monies when discharged.

All money which is in the possession of new inmates is credited to their personal account. Wages earned in industries and other inmate jobs are split 50-50 between the savings and personal accounts. Effectively, all that goes into the savings account is the 50 percent of institutional jobs. Persons on work-release are paid directly by the employer, but 15 percent of this salary is supposed to be paid to the institution releasing them for room and board. Problems arise because some inmates end up owing the institution money upon their release.

No currency is allowed inside the prison walls. Therefore, all money transactions are handled through transfer slips. When an outside person brings money into the institution, it must be left at outer control. A receipt will be filled out in triplicate, with a copy for the sender, the inmate, and the institution treasurer. The inmate's personal account will be credited with the amount given, and he or she will be free to spend it.

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*Front control is the glass enclosed area housing guards who regulate everything that enters and leaves the institution.

When an inmate wishes to send money outside the institution, a check-list transfer slip must be filled out and submitted to the treasurer's office. The inmate retains a copy of this transfer. The treasurer will then issue a check for the appropriate amount and send it out (provided the inmate has included an addressed, self-stamped envelope). An inmate at MCI Walpole may transfer money into another inmate's account; this is accomplished by filling out a transfer slip and sending it to the treasurer. This is not permitted at MCI Framingham.

A majority of inmate financial transactions involve the canteen. Inmates may purchase food, clothing, and some toiletries. This is done by purchasing a canteen ticket (or store card) for 5, 10, 15, or 20 dollars. At MCI Walpole these tickets must be ordered by Friday, from the treasurer, and will be given to the inmate on Monday. Inmates then order what they want and have their canteen ticket punched for the amount of the purchase. If an inmate wants to purchase something after the week's canteen ticket is used up, or if an item(s) he is buying costs more than $20, an inmate can draw further on the funds by a miscellaneous sales ticket. This procedure is slightly different at MCI Framingham, where store cards can be procured on Tuesday and Friday and shopping at the store is daily.

When a lifer or SDP wishes to draw on his or her savings account, they must notify the Superintendent. If the Superintendent approves, the funds will be transferred into the personal account. The treasurer at MCI Framingham makes the further qualification that lifers must leave at least $50 in their savings account.

The Walpole inmate's personal funds are divided into four separate accounts: two savings, one checking, and one cash flow. The interest from these accounts is placed into a separate account and is used to purchase sales slips and receipts for Avocation. The Walpole savings accounts funds are divided in three ways: one checking account, and two savings accounts. The interest from these accounts is used to purchase equipment (primarily recreational) for tennis, basketball, badminton, fencing, riflery, etc.

The savings accounts are divided among four banks: Boston Five Cent Savings, Foxboro, Franklin, and Charlestown Savings Bank. This division of the savings accounts funds (two from personal accounts and two from savings) is allegedly to avoid state favors to any particular bank. In addition, it was justified at one time because insurance coverage at each bank was much lower than it is today.

All of the checking accounts from Walpole inmate accounts are at the Norfolk Trust.

The Framingham inmate's personal funds are divided between a checking account and a savings account. The interest from the savings account goes to the canteen fund and somehow goes to the benefit of the inmates through the canteen. All of the inmates' savings accounts are in a checking account, which obviously draws no interest. Supposedly interest from the savings account would go to the inmate's general fund, but there is, in fact, no such interest. All of these accounts are at the Framingham Trust Company.

The use of interest accumulated by both savings and personal accounts is summarized by M.G.L. ch. 127, §3, which states that interest is to be "expended for the general welfare of all inmates at the discretion of the Superintendent."

Although inmates wages are not regulated by law, the practice at Walpole and Farmingham is to enter these in inmate accounts once monthly. This is usually done at Walpole at mid-month for the previous month. Walpole inmates receive a statement of their accounts once a year when the state does its audit. However, at both Framingham and Walpole the inmate may at any time, request in writing, such a statement.

According to the Walpole treasurer there is one charge which is in the planning stage for inmate accounts. The Department of Corrections is presently arranging for each inmate to have a savings account separate from institutional control. This would allow each inmate to receive interest on his money. While an inmate is incarcerated, the savings account will be in both his name and the Superintendent's. When a man is released, he will have the option of either closing the account (receiving both the principal and the interest) or of retaining the account in his own name exclusively. It is not clear whether or not this option would be available to Framingham inmates.

P. Medical Complaints

1. *Medical services.* MCI Walpole has a 15-bed infirmary, had one full-time physician who has yet to be replaced, a dentist's room, a pharmacy, and an X-ray room. The doctor should handle the routine cases, and should supervise the transfer of an inmate requiring more serious attention to the hospital at MCI Norfolk. The Norfolk hospital has 30 beds and at least 2 doctors. The hospital handles detecting and treating communicable diseases, post-operative care, illnesses requiring a period of convalescence (e.g. ulcers, broken bones, etc.), and the administration of tests (X-rays, G.I. series, etc.) Some minor surgery may be performed at MCI Norfolk but for the most part, an inmate requiring surgery or complex medical attention will be transferred to either Lemuel Shattuck Hospital or Massachusetts General Hospital.

MCI Framingham has a 22-bed infirmary and four isolation-observation "cages." Often as many as half of the available hospital rooms are used as temporary housing due to overcrowding. There is one full-time physician who spends a maximum of 5 to 10 hours per week at the institution. At present, there is no gynecologist and one part-time dentist. There are no X-ray facilities. Sentenced inmates requiring more serious attention should be transferred to Framingham Union Hospital. ATU prisoners with serious medical problems are supposed to be transferred to Boston City Hospital. Such transfers must be authorized by the prison doctor.

Each inmate is required by law to receive a physical exam upon entering the institution. The exam should be given at the RDC within three days or arrival. MCI Framingham inmates should receive a similar exam at the MCF Framingham infirmary. It is directed toward detecting the presence of communicable diseases. A proposal for the regulation of medical care for inmates is apparently being formulated by the director of Medical Services. However, the DOC has not approved it, and therefore, at this time, there are no set regulations governing the administration of medical care in the institutions.

2. *Medical problems.* The medical complaints our office receives usually involve 1) lack of medical attention or 2) improper medical treatment. The problems range from pains that are not diagnosed (often followed by accusations by the doctors that the inmate is faking to procure drugs), to lack of post-operative care, or administration of inappropriate drugs for the ailment (i.e. aspirin for ulcers).

It is important that you probe the inmate's story: there are occasions where an inmate *may* be trying to get an increased dosage of tranquilizers, and persistence in pursuing these demands may antagonize the doctor to such an extent that he will discontinue whatever treatment the inmate is already receiving. For the most part, however, obtaining adequate medical care is a result of the tenacity of the inmate and the legal assistant.

3. *Steps to follow to secure proper treatment.* During the initial interview, you should get the following information from the client:

- Nature of the medical complaint
- Specifics of the complaint
  a. When the problem arose
  b. What action the inmate took toward notifying the medical authorities that s/he needed attention
- Dates of any medical examinations that occurred
- Names of medics and doctors who provided treatment or who denied treatment
- Treatment provided
- Names of witnesses to physical condition and/or treatment provided
- If sent to an outside hospital: name of hospital and date admitted and discharged.

Ask your client to keep a log of the people he speaks to about the problem and any treatment s/he receives—the more documentation you can provide attesting to poor attention, the better your chances will be of changing the situation.

If your client has a previous medical history that could affect the present problem, you should examine his/her medical records. (It is a good practice to see these records in any case—they will verify (or not) the information the administration gives you as to what kind of prescriptions the inmate has received, results of tests, X-rays, etc.) If you have a signed release form, set up an appointment with the doctor to examine the record at the institution. If you want a *copy* of the records, you will probably have to make a request in writing to the superintendent. If he doesn't respond, write to one of the DOC attorneys, stating your request and send a copy of this to the superintendent. The latter action should act as sufficient pressure on the superintendent.

Once you have secured all relevant information, some problems may be solved simply by sending a letter to the doctor at Walpole: he may have been unaware of the medical problem, or he may have needed a slight push to act on it. The authorities at Framingham are more reluctant to reexamine any decisions and access to medical records is difficult to obtain, although technically the procedure is identical. Usually, however, when the doctor believes he has administered the proper care, you will receive a letter stating as much from his assistant. Framingham doesn't bother. In that case, you should write a fairly comprehensive letter to the Director of Medical Services at the Department of Correction, outlining the problem, citing facts, names of witnesses, describing the inmate's condition, and any peculiar problems that make his/her case particularly pressing.

As a last resort, the Residents' Health Advisory Committee, which is comprised of interested public, DOC personnel and institutional staff, and residents, meets once a month to air grievances to the Director of Medical Services. Someone from PRP will attend this meeting and you should 1) call Phil Glisonas and ask to have your problem put on the agenda and 2) provide the attending PRP member with all the documentation you have accumulated. The PRP member should then confront the Director with facts of the case and demand a response from him to the members of the meeting.

Q. Harassment of Inmates

Our office generally encounters two kinds of harassment problems: harassment (usually physical abuse) by guards, or harassment by other inmates. The approach to these problems is quite different.

1. *Harrassment by guards.* An inmate may find himself persecuted by guards for any of a number of reasons: (1) he is seen as political (either he is vocally "militant" or simply is not subservient to authority), (2) he is singled out as an example to other inmates by a guard attempting to prove his "toughness," (3) the nature of his crime makes him an obvious victim (i.e. he is serving time for assault or murder of a police officer or guard).

The harassment can take different forms: physical abuse, denial of privileges, unwarranted d-reports (often the result of a set-up), and is always extremely difficult to prove.

Whatever the problem, you will want to get the following information from the inmate:

- What is the nature of the harassment?
- What inmates and/or guards were involved?
- Are there any previous incidents of harassment?
- If the incident involved a beating, did the inmates receive medical attention?
  - What was his condition?
  - Were there witnesses to his condition?
  - Who treated him?

a. *Incidents of brutality.* If the inmate was beaten by guards, it is not uncommon for the *inmate* to be charged with 'assault on a correctional officer' and given a d-report. The matter may also be referred to the DA, who will then decide whether or not to prosecute the inmate. (See PLAP and PRP manuals on *Disciplinary Proceedings.)*

If such is the case, you should first get the indictment number, the court, and the date of hearing, and then conduct as thorough an investigation of the incident as possible so you can provide some documentation to counter the DA's accusations. Unfortunately, it is next to impossible to obtain such information—no administrative person will counter a guard's accusation unless the case is completely clear-cut; a guard will rarely, if ever, speak against one of his own; and another inmate's word counts for little next to the word of an officer.

If the beating was severe, your best evidence may be the medical report of his condition. If you see the inmate immediately following the incident, ask him to have the doctor write a full description of his injuries, if he has not already done so. (See *Medical Complaints* for procedure for obtaining the medical report.)

Once you have this information, contact our attorney in charge of criminal defense, who will make the decision as to whether we will handle the case.

If the inmate has not received a d-report, and in fact wants to prosecute the officers, you should gather the same information and write to the superintendent, and an attorney for the DOC, informing them that you are conducting an investigation. You should also request to see the results of *their* investigation when completed.

If the case is particularly blatant, the superintendent might refer the matter to the DA's office. That office will conduct an investigation to see if the officers involved should be prosecuted. It is unlikely that this will occur—the DA will have to have a better than average chance of winning in court against the officer(s) before he will take the risk of alienating the guards' union. (If there were no witnesses, or if the only witnesses were inmates, it is highly unlikely that the DA's office will take any action.) In spite of the low probability of any positive results, you should find out the names of the investigating officer and provide him with any information beneficial to the inmate's case. Do not, under any circumstances, mention facts that could in any way incriminate your client; and advise your client, that, when interviewed by the police in this matter, he should state *only* the facts that are beneficial to his case. If you can, secure a copy of his final report.

As the present time, PRP has not decided on a course to follow to pressure the administration into acting on these beating incidents. We are compiling documentation on cases of brutality for a possible suit.

b. *Searches/plants.* Another form of harassment of inmates is "shake-downs" of cells when prisoners are absent, often resulting in the "discovery" of contraband that the inmate disclaims possessing. This contraband may be used as evidence for a d-report, and the resulting sanction may be severe.

The rules governing searches at Walpole (I.O. 5030.2) fail to offer solid guarantees against searches without the inmate's presence: every rule is qualified. Basically, whether the regulations are followed is up to the discretion of the guard on duty (i.e. if the officer on duty thinks "security considerations dictate otherwise," he the inmate).

2. *Harassment by inmates.* Within the prison, an individual or a clique of inmates are sometimes harassed by other prisoners. An inmate serving time on a sex offense involving a minor is likely to be singled out by those around him for various forms of abuse. An inmate may have "enemies" on the inside because of his connections on the outside or he may have to confront the relatives of the victim of his alleged crime.

There are basically four options open to an inmate who is threatened by other prisoners: transfer within the institution, transfer to another institution within the state, transfer out of state, or voluntary protective custody. The DOC offers another alternative: the inmate can give the institution the names of the men with whom he is having difficulty and the DOC will arrange to have them confined in separate sections of the institutions. For several reasons, no inmate finds this suggestion realistic: on the one hand, giving names could be construed as informing and as such would create more danger for the man, and secondly, for someone who is harassed because of the nature of his crime, there is no way of knowing exactly which inmates will harass him. Framingham inmates have some options, but the problem of harassment (especially by guards) has come up infrequently.

a. *Transfer within the institution.* This is probably the easiest option to pursue. If an inmate is having problems with one particular person, he may simply want to move to another cell block within the same custody status. If the situation is fairly clear cut, you may only have to speak to a deputy (a follow-up letter should be sent) about the situation, and the deputy should arrange for the move. If he does not take any action, take the request to the superintendent. Unfortunately, there are only two men's and two women's living units at Framingham, so when a problem occurs with another inmate, there isn't much room to move from it inside the institution.

b. *Intra-institutional transfer.* If an inmate in Walpole wants to move to another institution within the state, obviously he will be moving to a lower custody status. He should make a request for transfer to the Director of Classification and Treatment at Walpole who will then decide whether or not he will grant the man a hearing. You should speak to the Director of Classification also, stressing the seriousness of the danger.

If the Director agrees to hold a hearing for the inmate, you should help your client to prepare his argument for it. The major point of his argument will be the danger to his life if he remains in the institution. However, he will also have to prove to the board that he is capable of functioning ably in a lower custody institution. (See CLASSIFICATION in PLAP and PRP Manuals.)

If a male inmate at Framingham wants to move to another institution, he is forced to go to a *higher* security institution unless transfer to a pre-release center can be arranged. This is obviously not a very viable alternative. If a female inmate at Framingham wishes to move, she may apply to one of the several houses of correction (York St. jail in Springfield, Plymouth House of Correction, or Worcester House of Correction) and if there is room a transfer may be arranged. However, these institutions are of a higher security nature and do not offer many helpful programs, so it is a less than attractive alternative. Again, a female inmate may attempt to get a space in a pre-release facility, but that option is limited by the minimal number of beds available for women.

c. *Transfer out of State.* There are some situations where an inmate will only be safe if he is removed from Massachusetts. Read the section in the PRP Manual for the procedure to follow to secure an out-of-state transfer. If he is clearly in physical danger, his chances are better than most for moving to another state in New England.

d. *Protective custody.* If the inmate cannot transfer to a lower custody status, and does not wish to leave the state, his only option may be protective custody. This is the grimmest alternative (see PROTECTIVE CUSTODY in PRP-WALPOLE) and the one that the administration will agree to most readily. Again, it will probably be a matter of notifying a deputy or the director of classification, pressuring them to act promptly on the inmate's request.

Although Framingham has no protective custody unit, the maximum security section (see DSU, etc.) has been offered as an alternative to those women housed in the ATU. Traditionally if an inmate requested to be separated from the rest of the population, "max" was used. Framingham authorities would probably push for transferring an inmate rather than having them housed in "max," simply because they wouldn't want to put a permanent guard on duty for a few people.

R. Visitation

Visitation problems are tangential to our legal work, and whether the problem is handled by the office or referred to another agency, is basically up to the legal assistant given the case. (See REFERRALS-CIVIL.)

If you choose to deal with the problem, it is important to get the following information from the inmate:

- Did the visitor previously have clearance?
- Does/did the visitor have any felony record? If so, what was the charge, how long ago was it received, how much time was given by the court?
- Did the visitor spend time in any prison in another state? (charge, time, parole, etc.)
- Did the visitor lie about the felony record when attempting to see the inmate?
- What was the visitor's relation to the inmate?
- Had s/he visited before? When?
- What reason did the institution give for denying the visit?

The DOC is supposedly formulating new regulations regarding visits. When they are made available, check them to see if the authorities have violated any stipulations. Once you have gathered the information, speak with Deputy Butterworth, outlining your objections to the access denial. If this discussion is fruitless, write a letter to the superintendent appealing the institution's decision. Unfortunately, our success with these cases has been limited.

S. Mail Tampering

The loss, destruction, and/or mutilation of inmates' mail is not an uncommon problem at MCI Walpole and Bridgewater. By institutional regulation; outgoing mail is not to be opened, but incoming mail can be searched for contraband. PRP mail, which should be stamped "Attorney-Client Correspondence" should be opened in the presence of the inmate.

If you are confronted with a mail tampering problem, first attempt to deal with it administratively. Try to pin point what specific person is tampering with the client's mail and then speak with one of the deputies or the administrative assistant to the superintendent. If this channel is unsuccessful, give the information on the case to Rick Seligman, who is compiling mail tampering cases for possible litigation.

III. Parole and Parole Revocation

A. The Parole Board

The Parole Board, whose offices are at 100 Cambridge Street, is an autonomous body that promulgates its own rules and regulations: it grants parole, revokes it, revises its rules, and supervises parolees. (The Parole Board's regulations are contained in *Structure, Rules, Statutes.)* The board must make an annual report of any revision of its rules to the Commissioner of Correction and may answer to the courts if it misuses its powers. For the most part, it functions unimpeded by judicial hampering.

The seven members of the board are appointed by the governor for five year terms with one member designated as chairperson. It is assisted by a Director of Parole Services, parole supervisors, parole officers, social workers, employment officers, and an attorney who serves as counsel to the Board. In addition, each of the institutions has a parole officer assigned to it.

B. Parole Eligibility

Parole eligibility varies depending upon the nature of the sentence: the parole eligibility for an indefinite sentence (which most Framingham sentences are) is determined differently from that for a minimum-maximum sentence. (See MGL Ch. 127 § 133 for a clearer delineation of parole eligibility.)

1. *Indefinite sentence*. The basic rule for indefinite sentence is:

- For individuals sentenced to a term of *less than six years*, parole eligibility is six months, if no prior commitments, and 1 year if there are prior commitments
- For individuals with a term more than 6 years but less than 12, eligibility is 1 year if there are no prior commitments, and 18 months if there are previous commitments.
- For each six year addition to the length of the sentence the parole eligibility is moved up six months.

NOTE: Prior commitments do not include juvenile commitments, or an earlier sentence if there was no intermediate parole or discharge. The time to be considered for parole eligibility begins from the effective date of sentence and good time is deducted.

2. *Minimum-maximum sentences*. A minimum-maximum sentence or a "Walpole" sentence consists of two dates (example: 5-10 years). The minimum date (5 years) is used in computing parole eligibility. There are basically three parole eligibility situations with this kind of sentence.

a. *Crime of violence* (defined MGL Ch 127 § 133a). An inmate must serve *two thirds* of the minimum sentence imposed, but not less than two years. If s/he has more than one sentence imposed on-and-after, s/he will have to serve two thirds of the aggregate of the minimum sentences, but not less than 2 years for each sentence.

b. *Crime committed on parole*. An inmate in this situation, must also complete two thirds of his/her sentence.

c. *Crimes other than violent or committed on parole*. An inmate with this kind of conviction must serve *one third* of the minimum but not less than one year. If there is more than one sentence, and they are not to be served concurrently, the person must serve one third of the aggregate of the minimum, but not less than one year for each.

d. *Special problems*.

(1) *Lifers*. A lifer not in for first degree murder is eligible fifteen years after the effective date of sentencing and should have a hearing every 3 years following.

(2) *Sexual offenders*. Inmates convicted of a second or subsequent offense may not be paroled for at least five years.

(3) *On-and-After-Henschal decision*. It has recently been decided by the SJS in the "Henschal Decision" that when an inmate is given more than one on-and-after sentence, then unless specified otherwise all on-and-after sentences are to be served concurrently. This will have a definite effect on an inmate's parole eligibility.

At the present time the Parole Board is looking for a way to circumvent the decision, however. PRP is presently filing suit in order to force compliance.

3. *Early parole considerations*.

a. *Indefinite sentences*. There are *no* specific requirements for early parole considerations for inmates serving indefinite sentences, Anyone is eligible to apply.

The inmate should write directly to the Parole Board, stating what his or her sentence is, how much time s/he has done on it, and when s/he would be eligible for normal parole consideration. The letter should state all possible mitigating facts and personal circumstances which make his/her continued incarceration an undue hardship, for example: child care problems, medical problems of his or hers (or his or her family), anything unfair about his/her sentence or trial, program development and institutional progress, future plans, and why his/her release presents no danger to the safety of the community.

All relevant documentation and recommendations should be sent with the letter or as soon thereafter as possible. The inmate should keep copies of everything s/he sends to the Board.

Parole Board members will review the case individually, approve or disapprove the request, and pass the case on to another Board member. If a majority (four) approve, the inmate will be scheduled for a regular parole hearing at the institution. If the petition is denied, the inmate can re-apply and the letter should request a written statement for any decision the Parole Board makes.

b. *Minimum-Maximum Sentences—1/3 Consideration*. An inmate serving time on a two-thirds crime may apply for a one-third parole consideration provided s/he is not serving time on a crime committed while on parole or on a second sexual offense. If incarcerated in a state institution, the inmate should first ask the records clerk to compute his/her hypothetical 1/3 parole eligibility date. Three months before that date, the inmate should ask the head social worker if s/he could be seen by the 1/3 board. This board, whose composition varies, will set a date for the hearing.

At the hearing, the inmate may or may not appear (and is not allowed representation), and all factors of his/her institutional record as well as factors prior to incarceration will be considered. The board will make a recommendation which the superintendent should approve or reject, and if approved send on to the Commissioner. After the Commissioner reviews the case, he will send the case to the Parole Board.

The Parole Board may choose to advance the parole eligibility date to any point up to the one-third date. The Board regards the issue as low priority in comparison to the rest of its work and may take from four to five months to make a decision.

All seven members of the board must approve of the decision and it is rare that the one-third eligibility is granted (one out of fifteen requests are granted an update for some time between the one-third and two-thirds dates). The members say that they do not want to supersede legislative or court intent in regard to the length of the sentence.

N.B. Inmates serving time in a Forestry Camp apply to the superintendent for review rather than the one-third board.

Inmates serving a state sentence in a House of Correction must receive the approval of both the sheriff of the House of Correction and the Superintendent of the institution s/he was transferred from.

c. *PRP involvement.* The inmate will be presenting a "classification argument" to the one-third board (see CLASSIFICATION ARGUMENT) and we can help him/her gather recommendations and prepare strategy.

Secondly, we can keep pressure on the appropriate persons at the various states of approval to make sure that the matter is being reviewed as quickly as possible.

C. The Parole Hearing

It is important to remember that parole is not seen by the board as a right but rather as a privilege and:

> Not merely as a reward for good conduct but . . . (recognition of) reasonable probability that s/he will live and remain at liberty without violating the law and that his/her release is not incompatible with the welfare of society. MGL Ch. 127 § 130

Since the board feels that an inmate has no legal right to parole, counsel is not permitted at a parole hearing, although an attorney or friend could speak with the Board before or after the hearing. The inmate does not petition for the hearing—only the parole board can initiate it. Participation at the hearing is restricted to the resident, parole personnel, and the Commissioner of Correction.

The board has a right to all available information about an inmate being considered for parole, and depends on the correctional institution to provide the CORI and evaluative material. A file on each inmate is kept at the parole office.

1. *Criteria for evaluation.* To determine the reliability of an inmate being evaluated for parole, the board considers a number of factors, including the inmate's:

- Previous record: nature of the crime, circumstances surrounding them (e.g. the board seems particularly harsh on drug offenders).
- Attitude toward the crime, prison officials, family, etc. (i.e. is s/he repentant?)
- Steps toward rehabilitation in prison.
- Possibility for vocational/educational opportunities on the street.
- General environment on the street (place to live, character of friends, etc.).

2. *Decision of board.* After the Board reviews the inmate's file, and interviews him/her in the hearing with three board members present, it makes one of the following decisions: parole, action pending, reserved, parole denied, postponed, revoke interview. (See *Structure, Rules* and *Statutes* for more delineation of decisions.)

3. *Setting up a program to present to parole board.* We can basically help the inmate prepare for the hearing in two ways.

a. *Outstanding warrants.* If, after examining the inmate's institutional file, you discover that s/he has outstanding warrants, and it seems clear that the board is or will be aware of them, help the inmate make the necessary motions to have them disposed of. (See PLAP Manual: WARRANTS.)

b. *Parole plans.* You should first "brainstorm" with the inmate to discover what his/her interests are and what contacts they might have regarding work, education, residence, etc., and then, using our resource manual and ideas the inmate has given you, follow through on those leads. The inmate can and should present whatever documentation s/he can of his/her reliability and future plans in the form of letters of recommendation, promises of employment, etc. (See CLASSIFICATION ARGUMENT for general approach to preparing an argument.)

You can gather/solicit these letters and at the same time lobby for the inmate by speaking with board members and other influential staff.

c. *Follow-up*. If parole is granted, follow through with the case until the inmate is on the street or in the program granted to him/her. This involves keeping pressure on the institutional parole officer and any members involved in the decision.

D. Conditions of Parole

Before the inmate leaves the institution on parole, s/he will have to sign a form agreeing to adhere to certain rules. The basic regulations include:

- Acting as a law-abiding citizen.
- Maintaining a close relationship with the parole officer (including informing officer of changes in employment, residence, marital status, and new arrests).
- Maintaining legitimate employment or involvement in a program.
- Prohibition of "a continuous pattern of association" with person having a previous criminal record.
- Notification of extended absences from the state.

In addition there are often conditions attached to parole that are specific to that individual's situation. (For a detailed list of all rules and obligations common to all parolees, see *Structure, Rules and Statutes*.)

E. Parole Revocation

A parolee may be revoked at any time if the parole officer believes the inmate has violated any of the conditions of parole. With his supervisor's consent, the parole officer must issue a warrant to hold the person in temporary custody for no more than 15 days. During that time, a hearing must be held with a neutral hearing officer and the inmate to decide whether there is sufficient reason for the revocation. If the results of the "probable cause" hearing are affirmative, the inmate must receive notice that he has been violated. The inmate then will be returned to the parent institution where s/he will await a parole revocation in front of three members of the Parole Board. If the inmate is informed of the hearing and does not appear (i.e. if s/he is revoked on "whereabouts unknown") the case will be reviewed without him/her and the board will consider the inmate to have had a hearing.

Although there is no absolute constitutional right to counsel, at the moment, Massachusetts Parole regulations allow the inmate representation by lawyers, law students, and paralegals, and this service is one of the most important functions of PRP legal assistants.

In order to prepare for a parole revocation hearing, you should first read and become familiar with *Morrissey v. Brewer*, 408 U.S. 471 (1972), which is the leading Supreme Court case outlining the specific procedural due process rights to which an inmate is entitled at her/his parole revocation hearing. (It also elaborates on the role of parole in the correctional system.) In addition, you should have a working knowledge of the regulations set forward by the Parole Board in *Structure, Rules and Statutes*.

1. *Morrissey v. Brewer*. The procedural rights afforded an inmate at his parole revocation hearing, as set forward by *Morrissey v. Brewer* are:

- Written notice of alleged parole violations
- Disclosure of evidence against the inmate (once the hearing is convened, the Board must present *all* evidence upon which it relies for any decision it makes.)
- Opportunity to be heard and present witnesses and documentary evidence
- Right to confront and cross-examine adverse witnesses unless hearing officer finds "good cause" to preclude such confrontation
- Neutral and detached hearing body (the parole board)
- Written statement by fact finders as to evidence relied upon and reasons for revocation.

However, the parole board is an autonomous body and the courts intervene in its matters only if there has been a blatant misuse of its powers. Therefore, we often encounter difficulty in enforcing adherence to the *Morrissey* minimum rights of due process, including:

a. *Written notice of alleged parole violation*. After the probable cause hearing the hearing officer should write up a *parole summary* which includes: reasons why the violation was issued, the parole officer's recommendation, the hearing officer's recommendation, and other facts deemed relevant to the hearing. However, there is a major exception to this procedure: in the case where the person is violated for "whereabouts unknown," the Parole Board has construed this step to be outside the inmate's procedural rights, and therefore the inmate does not have this preliminary report with which to refute the allegations or explain extenuating circumstances.

b. *Disclosure of evidence. Morrissey* recognizes the right of the parole board to protect the confidentiality of informants and thereby, by analogy, the "Parole Officer's Running Record" and police documents are considered confidential, privileged, information. This private and unavailable information often results in surprise use of "state" evidence.

c. *Opportunity to be heard and present witnesses.* The parole board discretionarily allows the inmate to exercise this right: at times they have refused outright to allow the inmate to call certain witnesses.

d. *Right to confront and cross-examine adverse witnesses.* Often the most incriminating evidence against the inmate is obtained from the supervising parole officer. However, due to our "soft-pedal adversary" tactics and the "good cause" language of *Morrissey*, it is extremely rare that we are able to cross-examine this officer. His/her evidence is contained in the report passed down from the preliminary hearing, and oftentimes it is vague and unsubstantiated. Obviously it is extremely difficult to refute incriminating evidence without being able to confront one's accuser.

e. *Written statement of fact finders.* Again, whether the parole board actually follows through with this *Morrissey* mandate is determined on an ad hoc basis; sometimes we get it, sometimes we don't.

2. *Mechanics of representation.* Our office receives a list of inmates having parole revocation hearings from the parent institution each month. The list is placed in the PRP mailbox at MCI Framingham. Each inmate on the list is interviewed to determine whether s/he wants PRP representatuon, and if so, s/he should sign a release form. We always urge inmates not to waive the hearing as confrontation is always useful.

Once you have received your assignment, you should:

- Interview your client, getting a sense of the reasons for revocation and preparing a casefile. (Be sure to contact the client immediately as some of the information you may need will take time to collect.)
- Make an appointment with the attorney for the parole board to review your client's parole file, at least two weeks before the hearing.
- Meet with your supervisor and/or an attorney to discuss the strategy for the hearing. Be certain to meet with one of these people often enough that you are confident you are pursuing a productive course.
- At least three days in advance of the hearing, submit your argument and/or parole plan to the board in writing.

a. *Strategy at hearing.* Parole violations are generally of two sorts: "whereabouts unknown" or "new arrest."

(1) *Whereabouts unknown.* If an inmate is facing a "whereabouts unknown" charge, there is a fair chance that s/he will be able to "win" her/his hearing and be reparoled. The basic strategy of this hearing is to first validate his/her whereabouts during the period in question, and second, offer the parole board concrete plans for his/her reparole.

The first problem involves tracking down corroboration of the inmate's residence, job, or program involvement. The residency could be proved by rent or utility checks, or witness corroboration and the latter by pay checks or statements (written or oral) by the person's employer or program supervisor.

Secondly, you will want to show the board that if re-paroled, the inmate will return to secure circumstances: s/he will need a home, a new job or program if the old is lost, and other evidence to his/her general stability. Get leads from the inmate as to jobs s/he likes, connections s/he has, relatives, etc., and follow them through until you can present the board with witnesses or letters corroborating the future situation.

Leg work is the crux of your involvement in a parole revocation case since the inmate will not be able to make the necessary contacts. Without corroborating evidence, chances for reparole are slim.

(2) *New arrest.* If the inmate has violated parole because of a new arrest, the chances of reparole are not as good.

(a) *Charges pending.* Often, when an inmate sees the parole board, his/her new charges have not been settled by the court. In this case the person will usually receive an "action pending" or "await court action" on the parole violation.

(N.B. When an inmate is facing prosecution for new charges, information divulged at a parole revocation hearing relating to the alleged crime is *not* privileged information and can later be used in court against the inmate.)

(b) *Charges dismissed.* If an inmate is returned from parole on new charges, and those charges are later dismissed or the person receives a suspended sentence on them, s/he may be reparoled at that point, but it will depend on the nature of the charge. If, for example, the new charge is for assault and battery, the board may be reluctant to reparole the inmate even if s/he is found not guilty, because of the violent nature of the charge and the feeling that "where there's smoke there's fire."

If you are representing someone in this situation, a persuasive and well-reasoned argument could be crucial to the person's parole. You should concentrate on presenting your client as a responsible, law-abiding parolee: offer documentation attesting to this in the form of letters or oral recommendations from past employers, friends, clergy, and others in the community.

3. *New sentence.* We often represent inmates who have been returned to the institution with a new sentence from a new charge, committed while on parole. Prior to January, 1975, an inmate in this situation was not afforded a hearing, and the parole violation warrant was left pending until the expiration of the new sentence. That policy has been changed—the board now grants hearings to inmates in this situation and may choose to revoke, to lift the warrant, or reparole to the new sentence.

a. *Reparole.* While one would think that a decision not to reparole would be favorable, in fact it may lengthen the term of the person's sentence: i.e. s/he would be reparoled to the new sentence, and as a parolee, would not receive good time while serving the new sentence.

However, if the previous sentence was long, and the new sentence short, it is unlikely that the board will lift the warrant. Since it would hurt the inmate's program plans to leave the warrant lodged, the best alternative might be to be reparoled to the new sentence. The inmate would then be serving day to day, but at least the sentences would run concurrently.

b. *Leaving the warrant lodged.* There are distinct disadvantages to having this warrant on the person's record: the person will not be serving his/her old sentence concurrently (even if so stipulated in the mitimus), and s/he will not be eligible for programs within the institution until the warrant is disposed of. The second factor will also probably mean that the person will be unable to transfer to a lower custody institution since a classification board will not look with favor on a person who has not made moves toward "rehabilitation."

c. *Lifting the warrant.* The best alternative if the new sentence is longer than the prior sentence is to ask to have the warrant lifted. This option allows for participation in programs and for the old and new sentences to run concurrently (unless stipulated differently in the mitimus). Your argument for this course will thus be on the grounds of the need for rehabilitation: for a person to serve a long period without recourse to education to work, when the old sentence is a matter of a few years, would be cruel and counter to the supposed goal of rehabilitation. The board has generally been responsive to this argument.

4. *General tactics.* In either case, "whereabouts unknown" or new arrest, your basic approach should probably be on substantive, rather than procedural grounds. The members of the board are generally cynical and condescending toward "legal" types of arguments, and feel no compulsion to reparole an inmate merely because his/her procedural rights have been violated. Therefore you should be geared toward disputing:

- The factual allegations: i.e. was it true that the parolee did not report to his/her officer? Did the parolee in fact deviate from the conditions of his/her parole? Is there really an action pending in the courts? Did the inmate report the arrest to the parole officer?
- Whether the alleged violations are substantial enough to warrant revocation. In *Morrissey*, the court establishes that to warrant revocation, the parolee must have deviated from the rules or conditions of his/her parole to such an extent that s/he can no longer be considered a "good risk" and in fact constitutes a threat to society. When the client has been charged with a new crime, obviously this is more difficult to refute. If, however, the violation is "whereabouts unknown," it is not necessarily the case that the inmate is no longer capable of being a law abiding citizen. Furthermore, you may be able to provide extenuating circumstances that explain why s/

he may not have followed the law of the parole rules and conditions.

N.B. Even if you decide not to stress procedural points, it is important to raise them for the sake of a later appeal.

5. *Follow-up to hearing.* A decision by the Parole Board will be issued at the hearing. An inmate may receive a reserve date, may be revoked, may receive an action pending, etc. (See *Structure, Rules and Statutes* for delineation of possible parole decisions.)

If the board takes an action pending, because it feels it is necessary to verify any pertinent information, or is waiting for a specific program to be pulled together, and later revokes the inmate, it is crucial that you follow the case through an insure that the parole board has relied solely upon evidence and information introducted at the hearing. If there is any additional evidence that the board uses for its decision, the inmate is entitled to a new hearing.

It is important, even if the board votes to reparole your client, to follow up and make sure that s/he actually leaves the prison walls on the date scheduled. The inmates are often subject to administrative backlogging and easily get forgotten—your pressure on both the institutional parole officer and members of the board should ensure that this does not happen.

If the parole board issues an "await court action," follow up by keeping in touch with the attorney working on the case and if there is a favorable disposition, make sure that the parole board and the Institutional Parole officer get notice of the disposition and set the necessary machinery in motion to get the inmate released.

In summary, the parole revocation hearing is one of our most direct and effective means of getting inmates back out onto the streets. Your preparation and representation is crucial. It is one of the few opportunities we have to actually make a difference in the final outcome of a proceeding.

APPENDIX C

A "DEFENDER/CORRECTIONS AIDE CAREER LATTICE"

The narrative and chart which follow were prepared as part of the initial study of which this manual is an outgrowth (Stein, Hoff and White, *Paralegal Workers in Criminal Justice Agencies: An Exploratory Study*, Blackstone Associates, Washington, D.C., 1973).

As the chart illustrates, a career "lattice" not only allows for upward advancement for a job-holder, but indicates opportunities for lateral mobility to better meet the aspirations and interests of employees. The idea of such transfers (or job rotation) is often important in agencies employing paralegals because, at least at first, most of the paralegal staff works at a common level of skills and salaries and opportunities for upward advancement are correspondingly limited.

The chart is meant to be suggestive, not prescriptive. Its primary purpose is to encourage administrators — many of whom have themselves enjoyed varied and lively professional careers — to make available to their paralegals similar opportunities to obtain diversified and rewarding careers.

CAREER LATTICE

There are many possibilities for various levels of paralegal positions in a public defender agency or a corrections legal service program. The Corrections Specialist position described here is but one example of a high-level job for a college graduate interested in exploring a career in the law. The Public Defender Aide model in the preceding section is one of the many "New Careers" type of paralegal positions which could be created for former clients and other ex-offenders, disadvantaged members of the client community, office file clerks who have the ability and interest for more rewarding career possibilities, or any high school graduate who shows an interest and an aptitude for a career in criminal defense work.

The chart which follows outlines some of these possibilities. Judging from the positive experiences of public defender agencies across the country, it would appear that all of these proposed roles could realistically provide valuable assistance to undermanned defender agencies seeking to provide a full range of quality legal services to their clientele.

Basically, these paralegal positions fall into three distinct skill levels. General qualifications, methods of recruitment and advancement; and pay scales for each of the three levels of jobs shown on the chart are briefly described before the chart appear. Following the chart is a brief job description for each role, linking each with actual paralegal projects uncovered around the country and discussed in the earlier "overview" chapter.

The six Aide I positions shown on the chart are largely routine and clerical in nature, requiring only a high school education and no prior experience. The pay should be equivalent to that of the office's clerical staff. The five Aide II positions require the worker to assume a larger amount of responsibility and exercise more discretion, generally under less direct supervision. Commensurately more education and experience should be required, perhaps two years of college and one year of relevant experience. Pay equal to that of a reasonably skilled and experienced secretary would be appropriate. The five Specialist positions are designed for persons with the intelligence, good judgment, discretion, and experience necessary to assume a large amount of responsibility in the handling of a client's case with somewhat reduced direct supervision. A college degree and one year of relevant experience might well be required. The pay should be that typically paid a college graduate with a liberal arts degree, with opportunities for pay increments thereafter.

This career lattice provides several avenues of advancement to the top of the heap, that is, to the position of a licensed attorney, or investigator, or social worker, for paralegals with the ability and inclination. A public defender or correctional legal service program would be well advised to be flexible in providing several means of entry into these positions. Possibilities include:

Promotion. The employee would enter the career lattice at the Aide I level. Thought should be given to transferring able and interested persons from the office clerical staff. This provides the incentive necessary to retain good personnel on the clerical staff who would otherwise view their positions as "dead-end" jobs.

Experience gained in any Aide I position should provide a knowledge of office and criminal justice agency procedures which would be valuable in any of the Aide II positions. Accordingly, the career lattice encourages Aides at the entry level to aspire to and work toward promotions into any Aide II-level position. The Specialist positions, on the other hand, carry with them a large degree of responsibility for clients' welfare. The year of experience in an Aide II position required for promotion to Specialist should therefore include at least three months in a directly relevant Aide II position.

Lateral entry. Paralegals and others from criminal justice agencies or rehabilitative programs with a year or so of experience and the requisite amount of education could fill Aide II positions. The career lattice presented here would also permit college graduates with no prior experience to assume these roles. Such graduates would be eligible to qualify for promotion to a Specialist position in a year.

Secretaries already on the office staff have traditionally made ideal Legal Systems Technicians (as in Philadelphia, the District of Columbia and the King County-Seattle prosecutor's office). Their education and experience in the agency may well suit them for other Aide II positions as well, providing an escape from the truncated Secretarial/Clerical career ladder.

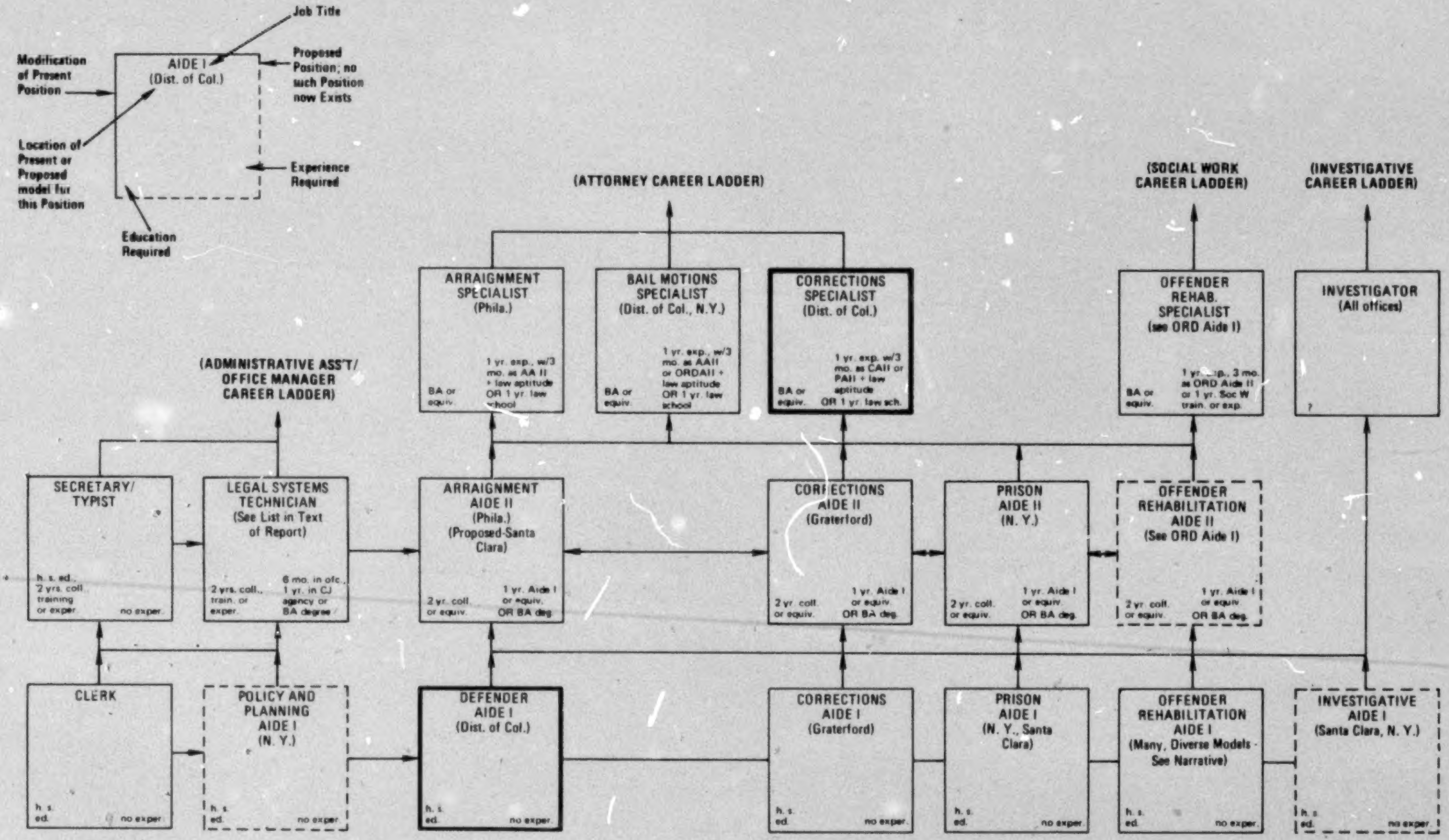
The Specialist positions would be available to college graduates with any one year of law school, graduate school, specialized training, or relevant work experience. But because of the technical and sensitive nature of these jobs, it would be good to first require the new employee to work as a trainee at the Aide II level for three to six months to become intimately familiar with the agencies with which he would come into regular contact.

Transfer. With the exception of the Specialist position, the paralegal positions outlined here all place much more emphasis on general skills, such as interviewing, persuasive skills, and knowledge of the criminal justice system than they do on technical skills. In order to encourage the most gratifying matchups of jobs and workers, the office should permit easy transferability between jobs at the Aide I and Aide II levels. Moreover, because of the similar technical skills involved, transfer between the Arraignment Specialist, Corrections Specialist, and Bail Motions Specialist should also be permitted.

A word of caution should be given on entrance or promotion requirements. Obviously some are necessary. But one should not be too rigid in their enforcement. The educational and experiential requirements outlined above are only indicators of the blend of analytical and human relations skills needed for these positions. One should recognize that many persons meeting these requirements are not good job candidates. On the other hand, many "New Careers" programs have produced remarkably able people with little or no prior education or experience. One should be flexible enough in administering these job criteria to permit such people to rise to a level commensurate with their ability. And the best and fairest way to determine which paralegals are eligible for promotion is through an ongoing, consistent process of assessing their work at the lower level.

The various paralegal positions are shown on the following chart and described briefly thereafter. Each box indicates one position. Solid lines around a box indicate that a similar position presently exists. Dotted lines mean the position is proposed. The office or offices having or considering a similar position is given below the job title. Suggested educational requirements are given in the lower left of each box and experience required is in the lower right. Each of the three rows indicates a separate grade level of position, and each column an individual career ladder.

DEFENDER/CORRECTIONS AIDE CAREER LATTICE


Job Title
Modification of Present Position
AIDE I (Dist. of Col.)
Proposed Position; no such Position now Exists
Location of Present or Proposed model fur this Position
Experience Required
Education Required
(ATTORNEY CAREER LADDER)
(SOCIAL WORK CAREER LADDER)
(INVESTIGATIVE CAREER LADDER)
(ADMINISTRATIVE ASS'T/ OFFICE MANAGER CAREER LADDER)
ARRAIGNMENT SPECIALIST (Phila.)
BA or equiv.
1 yr. exp., w/3 mo. as AA II + law aptitude OR 1 yr. law school
BAIL MOTIONS SPECIALIST (Dist. of Col., N.Y.)
BA or equiv.
1 yr. exp., w/3 mo. as AAII or ORDAII + law aptitude OR 1 yr. law school
CORRECTIONS SPECIALIST (Dist. of Col.)
BA or equiv.
1 yr. exp. w/3 mo. as CAII or PAII + law aptitude OR 1 yr. law sch.
OFFENDER REHAB. SPECIALIST (see ORD Aide I)
BA or equiv.
1 yr. exp., 3 mo. as ORD Aide II or 1 yr. Soc W train. or exp.
INVESTIGATOR (All offices)
?
SECRETARY/ TYPIST
h. s. ed., 2 yrs. coll. training or exper.
no exper.
LEGAL SYSTEMS TECHNICIAN (See List in Text of Report)
2 yrs. coll., train. or exper.
6 mo. in ofc., 1 yr. in CJ agency or BA degree
ARRAIGNMENT AIDE II (Phila.) (Proposed-Santa Clara)
2 yr. coll. or equiv.
1 yr. Aide I or equiv. OR BA deg.
CORRECTIONS AIDE II (Graterford)
2 yr. coll. or equiv.
1 yr. Aide I or equiv. OR BA deg.
PRISON AIDE II (N. Y.)
2 yr. coll. or equiv.
1 yr. Aide I or equiv. OR BA deg.
OFFENDER REHABILITATION AIDE II (See ORD Aide I)
2 yr. coll. or equiv.
1 yr. Aide I or equiv. OR BA deg.
CLERK
h. s. ed.
no exper.
POLICY AND PLANNING AIDE I (N. Y.)
h. s. ed.
no exper.
DEFENDER AIDE I (Dist. of Col.)
h. s. ed.
no exper.
CORRECTIONS AIDE I (Graterford)
h. s. ed.
no exper.
PRISON AIDE I (N. Y., Santa Clara)
h. s. ed.
no exper.
OFFENDER REHABILITATION AIDE I (Many, Diverse Models - See Narrative)
h. s. ed.
no exper.
INVESTIGATIVE AIDE I (Santa Clara, N. Y.)
h. s. ed.
no exper.

APPENDIX D

THE "PARALEGAL SPECIALIST SERIES," UNITED STATES CIVIL SERVICE COMMISSION

The following bulletin describes not only the new paralegal series of jobs falling into the Federal Civil Service structure, but also provides much of the rationale used by the Civil Service Commission for establishing these positions. It therefore serves as a useful prototype for others seeking to adjust civil service systems to the new breed of legal workers called paralegals. It should be noted that the U.S. Civil Service Commission did not prepare this bulletin entirely on its own. The inspiration for its creation and much of the thinking reflected in the document was provided by the United States Attorney's Office for the District of Columbia, and especially Administrative Assistant Frank J. Vargo of that office.

UNITED STATES CIVIL SERVICE COMMISSION

BULLETIN

BULLETIN NO. 930-17

Washington, D.C. 20415
August 11, 1975

SUBJECT: Classification and Qualification Standards

To Heads of Departments and Agencies:

Purpose

Attached to this Bulletin are advance copies of series definitions and special qualification standards for interim use for the new Paralegal Specialist Series, GS-950; and the revised Legal Clerk and Technician Series, GS-986; and a revised series definition for the Deportation and Exclusion Examining Series, GS-942. Information regarding these and other changes in the Legal and Kindred Group, GS-900, is provided below:

1. Paralegal Specialist Series, GS-950

This new series has been developed to meet the needs of a number of agencies who have established paralegal positions and who plan establishment of many more such positions to provide better utilization of legal personnel. Generally, these positions have been classified in the Legal Clerical and Administrative Series, GS-986; the Legal Assistance Series, GS-954; or the Adjudicating Series, GS-960.

A large number of these positions involve the application of substantial legal knowledge in performing responsible assignments in support of attorneys. For such positions a law degree is a desirable qualification though not a necessary one because the work does not require full professional legal competence; however, legal education is a consideration in ranking candidates.

Because of the required level of discretion and independent judgment in the application of substantial legal knowledge and the relevance of college-level education, this occupation has been identified as a two-grade interval occupation for which the Professional and Administrative Career Examination (PACE) is appropriate. Test 500 may be used as a factor for inservice placement; it may not be used on a pass-fail basis.

INQUIRIES: Standards Division, Bureau of Policies and Standards, telephone code 101, extension 25612, or 63-25612

CODE: 930, Programs for Specific Positions

DISTRIBUTION: FPM

BULLETIN EXPIRES: July 31, 1976

Positions classifiable to the new Paralegal Specialist Series include most positions previously classified in the Legal Assistance Series, GS-954, and the Adjudicating Series, GS-960; these series are hereby abolished. The Paralegal Specialist Series also includes some of the higher level administrative positions, requiring quasi-legal knowledge, previously classified in the Legal Clerical and Administrative Series, GS-986.

2. Legal Clerk and Technician Series, GS-986

The title and series definition for this one-grade interval series have been revised, and a new qualification standard has been provided. The qualification standard for the Legal and Kindred Group, GS-900 (Legal Assistant, GS-5/6 and Clerk, GS-4) issued in June 1962, is rescinded.

Inclusion of technician levels in this series provides a career bridge between legal clerical positions and positions in the Paralegal Specialist Series.

3. Professional Legal Occupations

When the classification standard for the General Attorney Series, GS-905, was developed, in 1959, the Commission agreed with the Federal Bar Association that, by definition, professional legal work should be that which requires bar membership. At that time there were a number of series identified as professional legal occupations not requiring bar membership. Commission studies of these occupations have resulted in some cases in setting up new quasi-legal series, e.g., for claims examining and land law examining positions formerly in the Adjudicating Series, GS-960, or in the case of Estate Tax Examining and Trade Mark Examining, determining that the positions characteristic of the occupation did generally require professional competence and should be classified in the General Attorney Series, GS-905. The Estate Tax Examining Series, GS-920, and the Trade Mark Examining Series, GS-1241, were redefined as quasi-legal series or nonprofessional series to provide an appropriate series for those few incumbents who were not members of the bar. Thus, the Legal Assistance Series, GS-954 and the Adjudicating Series, GS-960, both of which are defined as involving professional legal work not requiring bar memberhsip, are anomalies not appropriate for continued use and have been abolished. The classification standard for the Legal Assistance Series, GS-954, issued in May 1951, and revised in March 1957 and October 1965, is rescinded.

For the same reason, the series definition for the Deportation and Exclusion Examining Series, GS-942, has been revised to delete reference to professional legal work not requiring admission to the bar. (Note: The qualification standard for the Hearings and Appeals Series, GS-930, may be used for positions in the Deportation and Exclusion Examining Series, GS-942, with appropriate selective factors.)

4. Implementation

The new or revised series definitions and qualification standards are effective immediately. In order to allow agencies time to review and reclassify positions now in the Legal Assistance Series, GS-954, and the Adjudicating Series, GS-960, the effective date for rescission of these two series is June 30, 1976. All reclassification actions must be effected by that date.

Raymond Jacobson

Raymond Jacobson
Executive Director

Attachments

Paralegal Specialist Series, GS-950: series definition and special qualification standard

Legal Clerk and Technician Series, GS-986: series definition and special qualification standard

Deportation and Exclusion Examining Series, GS-942: series definition

GS-950 PARALEGAL SPECIALIST SERIES GS-950

This series includes positions which involve paralegal work not requiring professional legal competence where such work is of a type not classifiable in some other series. The work requires discretion and independent judgment in the application of specialized knowledge of particular laws, regulations, precedents or agency practices based thereon. The work includes such activities as (a) legal research, analyzing legal decisions, opinions, rulings, memoranda, and other legal material, selecting principles of law, and preparing digests of the points of law involved; (b) selecting, assembling, summarizing, and compiling substantive information on statutes, treaties, contracts, other legal instruments and specific legal subjects; (c) case preparation for civil litigation, criminal law proceedings or agency hearings, including the collection, analysis and evaluation of evidence, e.g., as to fraud and fraudulent and other irregular activities or violations of laws; (d) analyzing facts and legal questions presented by personnel administering specific Federal laws, answering the questions where they have been settled by interpretations of applicable legal provisions, regulations, precedents, and agency policy, and in some instances preparing informative and instructional material for general use; (e) adjudicating applications or cases on the basis of pertinent laws, regulations, policies and precedent decisions; or (f) performing other paralegal duties. Work in this series may or may not be performed under the direction of a lawyer.

Paralegal Specialist, GS-5 and above

DESCRIPTION OF WORK

Paralegal specialist positions involve such activities as (a) legal research, analyzing legal decisions, opinions, rulings, memoranda, and other legal material, selecting principles of law, and preparing digests of the points of law involved; (b) selecting, assembling, summarizing, and compiling substantive information on statutes, treaties, contracts, other legal instruments, and specific legal subjects; (c) case preparation for civil litigation, criminal law proceedings or agency hearings, including the collection, analysis, and evaluation of evidence, e.g., as to fraud and fraudulent and other irregular activities or violations of laws; (d) analyzing facts and legal questions presented by personnel administering specific Federal laws, answering the questions where they have been settled by interpretations of applicable legal provisions, regulations, precedents, and agency policy, and in some instances preparing informative and instructional material for general use; (e) adjudicating applications or cases on the basis of pertinent laws, regulations, policies and precedent decisions; or (f) performing other paralegal duties requiring discretion and independent judgment in the application of specialized knowledge of particular laws, regulations, precedents, or agency practices based thereon. These duties may or may not be performed under the direction of a lawyer.

EXPERIENCE AND TRAINING REQUIREMENTS

Except for the substitution of education provided for below, candidates must have had both general and specialized experience as follows:

Grade	General (years)	Specialized (years)	Total (years)
GS-5	3	0	3
GS-7	3	1	4
GS-9	3	2	5
GS-11 and above	3	3	6

General Experience

This is progressively responsible experience which demonstrated the ability to explain, apply or interpret rules, regulations, procedures, policies, precedents, or other kinds of criteria. Such experience may have been gained in administrative, professional, investigative, technical, high level clerical, or other responsible work.

Qualifying general experience may have been gained, for example, as a legal clerk, claims examiner, claims adjuster, voucher examiner, investigator, or contact representative.

Specialized Experience

This is legal, quasi-legal, paralegal, legal technician or related work that demonstrated:

- Ability to evaluate pertinent facts and evidence;
- Ability to interpret and apply laws, rules, regulations, and precedents;
- Skill and judgment in the analysis of cases;
- Ability to communicate effectively orally and in writing;
- As required, ability to deal effectively with individuals and groups;
- As required, knowledge of the pertinent subject area.

Qualifying specialized experience may have been acquired in positions which involved, for example:

(1) Preparation, development, examination, review, or authorization of action on claims in accordance with applicable laws, rules, regulations,precedents, policies, office practices and established procedures; or

(2) Examination and/or preparation of contracts, legal instruments, or other documents to assure completeness of information and conformance to pertinent laws, rules, regulations, precedents, and office requirements which has required the application of a specialized knowledge of particular laws, or of regulations, precedents or practices based thereon; or

(3) Analysis of legal decisions, opinions, rulings, memoranda, and other legal material and preparation of digests of the points of law involved for the internal use of the agency; or

(4) Interpretation and application of laws and related regulations in determining individual or agency responsibility, e.g.,

potential liability of individuals to the Government for fraud, over-payment of benefits, taxes, etc., and potential liability of an agency for tort, loss of personal property, etc.; or

(5) Selection, compilation, and summarization of substantive information on statutes, treaties, and specific legal subjects for the use of others; or

(6) Conduct of hearings or adjudication of appeals arising under statute or regulations of a Government agency; or

(7) Investigation and analysis of evidence of alleged or suspected violations of laws or regulations.

Quality of Experience

For positions at any grade, the required amount of experience will not in itself be accepted as proof of qualification. The candidate's record of experience and training must show the ability to perform the duties of the position. For positions at grades GS-11 and below, at least 6 months of the required specialized experience must have been at a level of difficulty and responsibility equivalent to that of the next lower grade, or 1 year of such experience at a level equivalent to the second lower grade in the Federal service. For positions at grades GS-12 and above, at least 1 year of the required specialized experience must have been at a level equivalent to the next lower grade in the Federal service.

Supervisory Positions

For supervisory positions, the qualification standard for "Supervisory Positions in General Schedule Occupations" in part III of Handbook X-118 should also be used.

Substitution of Education for Experience

(1) Successful completion of a full 4-year course in an accredited college or university leading to a bachelor's degree may be substituted for 3 years of general experience. Such education sucessfully completed in a residence school above high school level may be substituted at the rate of 1 academic year of study for 9 months of experience up to a maximum of 4 years of study for 3 years of general experience.

(2) Completion of all requirements for an LL.B., J.D., or higher degree from a recognized law school, including at least 6 full years of resident college work, will meet the requirements for grade GS-9.

(3) Successful completion of 1 full academic year of study, e.g., 30 semester hours, in a paralegal or legal curriculum may be substituted for 1 year of specialized experience required for grades GS-7 and above; less than 1 full year of study will be credited on a pro-rata basis.

WRITTEN TEST

Candidates for competitive appointment to grades GS-5 and GS-7 must pass an appropriate written test. For inservice placement actions, the test is not required and, therefore, may not be used on a pass-fail basis. In addition, the test may not be used in evaluating or ranking eligible employees unless the test is approved for this purpose by the Civil Service Commission.

BASIS OF RATING

Competitors for all positions are rated on a scale of 100. Rankings are made:

1. For competitive appointment at grades 5 and 7: on the basis of the written test.
2. For competitive appointments above GS-7: on the basis of the extent and quality of experience and training relevant to the duties of the position.

PHYSICAL REQUIREMENTS

Candidates must be physically able to perform the duties of the position efficiently and without hazard to themselves or to others. Ability to read without strain printed material the size of typewritten characters is required, corrective lenses permitted. Ability to speak without impediment may be required for some positions. Ability to hear the conversational voice, with or without a hearing aid, is required for most positions; however, some positions may be suitable for the deaf. In most instances, an amputation of arm, hand, leg, or foot, will not disqualify for appointment, although it may be necessary that this condition be compensated by use of satisfactory prosthesis. Candidates must possess emotional and mental stability.

GS-986 LEGAL CLERK AND TECHNICIAN SERIES GS-986

This series includes positions which involve legal clerical or technical work of a type not classifiable in other series in the Legal and Kindred Group, GS-900. The work requires the ability to apply established instructions, rules, regulations and procedures relative to legal or paralegal activities.

Note: This special qualification standard has been developed for interim use until a standards study of the occupation can be made. It is intended for use primarily for inservice placement but the education and experience requirements may be used in filling positions competitively from appropriate registers.

Legal Clerk and Technician, GS-4 and above

DESCRIPTION OF WORK

Candidates appointed to these positions perform legal clerical or technical work of a type not classifiable in other series in the Legal and Kindred Group, GS-900. This work requires the ability to apply established instructions, rules, regulations and procedures relative to legal or paralegal activities.

EXPERIENCE, TRAINING AND RELATED REQUIREMENTS

Candidates must have had qualifying experience in the amounts shown in the following table:

Grade	General (years)	Specialized (years)	Total (years)
GS-4	2	None	2
GS-5	2	1	3
GS-6	2	2	4
GS-7	2	3	5
GS-8 and above	2	4	6

General Experience

General experience is responsible general office clerical experience which has demonstrated the ability to perform clerical duties satisfactorily.

Note: The qualification standard issued in June 1962, for positions at GS-4, 5, and 6 in the Legal and Kindred Group, GS-900, is rescinded.

Specialized Experience

This is responsible experience in clerical, administrative, technical or other responsible work related to legal or paralegal activities that demonstrates the ability to interpret, explain, and/or apply established instructions, rules, regulations, procedures, policies, precedents, or other kinds of criteria.

Examples of qualifying specialized experience include legal clerical or secretarial work and legal instruments examining. This experience involves such duties as maintenance of legal files and case controls, extraction of information from legal files and preparation of legal forms and documents.

Quality of Experience

For positions at GS-4, 5, and 6, at least one year of the required experience must have been at a level comparable to that of the next lower grade in the Federal service. For positions at GS-7 and above, candidates must show at least one year of experience comparable to the next lower grade or two years of experience comparable to the second lower grade in the Federal service. In all cases, the candidate's total experience and training must give evidence of his ability to perform the duties of the position to be filled.

Substitution of Education for Experience

For the first two years of required general experience, successful completion of resident education in a school above the high school level may be substituted on the basis of 1/2 academic year of study or the equivalent (e.g., 15 semester hours of college work or 18 weeks of business school), for 6 months of experience. Only limited credit will be allowed for training which has been obtained only or primarily in remedial or refresher courses or in the basic skills of shorthand or typing. Two academic years of study fully meets the education and experience requirements for GS-4.

For GS-5, successful completion of the requirements for a bachelor's degree at an accredited college, which included or was supplemented by at least 12 semester hours of course work in law or paralegal subjects fully meets the education and experience requirements. Other education and training will be given appropriate credit on a pro rata basis.

Supervisory Positions

For supervisory positions, the qualification standard for "Supervisory Positions in General Schedule Occupations," in part III of Handbook X-118 should also be used.

GS-942 DEPORTATION AND EXCLUSION EXAMINING SERIES GS-942

This series includes all classes of positions the duties of which are to supervise or perform legal work involved in the conduct of formal hearings accorded to aliens in deportation or in deportation and exclusion proceedings, the development of a record thereof, and the preparation of reports or orders containing findings of fact, conclusions of law, and decisions reached.

U. S. GOVERNMENT PRINTING OFFICE : 1975 O - 210-537 (10)

APPENDIX E

INSTITUTIONS PROVIDING EDUCATIONAL OR TRAINING PROGRAMS FOR PARALEGALS

Although few of the following institutions offer specialized education or training in criminal justice matters, many of their graduates are interested in applying their talents as paralegals in defender offices and inmate legal services programs. They may also offer non-lawyer staff members of such agencies opportunities to develop or improve their skills as paralegals. Moreover, as paralegal job opportunities in the criminal justice system expand, more and more of these schools will offer courses in that legal speciality.

The first of these lists was prepared by the American Bar Association's Special (now Standing) Committee on Legal Assistants, while the second was prepared by the American Association of Community and Junior Colleges. There is suprisingly little overlap between the two listings.

OFFICE OF DATA COLLECTION
AMERICAN ASSOCIATION OF COMMUNITY AND JUNIOR COLLEGES

Preliminary Report - January, 1975
Highlights of the Survey of Paralegal Programs

During November, AACJC's Data Collection Office conducted a postal card and questionnaire survey of paralegal programs as a follow-up to an earlier survey conducted in March of 1974. The purpose of this survey was (1) to compile an updated list of schools offering a paralegal program and schools which anticipate starting a paralegal program and (2) to obtain additional information about existing programs.

For the purposes of both the post card and the questionnaire, the Data Collection staff defined a paralegal program as a program of four or more courses which prepares an individual to assist attorneys and courts, community groups, social agencies, or private businesses in the delivery of legal services.

POSTAL CARD SURVEY

Post cards were sent to the 215 institutions which had previously indicated they were either (a) in the planning or exploration stage for establishing such a program or (b) they were interested in beginning such planning.

Results

To date, there have been 203 responses received, a 94% return. The results are summarized below.

Presently offering a program	17
Program not offered and non anticipated	74
Program not presently offered anticipated to begin offering courses during:	
Spring of 1975	5
Fall of 1975	36
Fall or Spring of 1976	11
Other	22
Program not presently offered, but considering or planning a program	38
	203

It is interesting to note that 74 institutions not yet offering programs have targeted a specific beginning date of paralegal courses. The seventeen schools which indicated they were offering a program were sent the questionnaire as described below.

QUESTIONNAIRE

A detailed questionnaire was first sent to the 57 schools which had previously indicated that they offered a paralegal program. The questionnaire responses were to provide additional information about existing programs and identify schools which are not offering programs which are appropriately classified as "paralegal," such as criminal justice, pre-law, and legal secretarial programs. As mentioned above, questionnaires were then also sent to the 17 schools which indicated on the post card survey that they presently offer a program.

To date, 49 of the 74 questionnaires sent have been returned, a response of 66%. Thirty-four of the schools responding indicated that they presently offer a certificate and/or Associate degree program. The results of these questionnaires are summarized below.

A. Programs Offered

The extent of the programs offered by the 34 institutions reporting existing programs are summarized as follows.

Associate degree program only	18	(53%)
Certificate program only	5	(15%)
Associate degree program *and* Certificate program	11	(32%)
	34	

It should be noted that 29 of the schools responding presently offer an Associate degree program.

B. Hours Required for a Certificate

The schools which indicated they offered a certificate program were asked to specify the number of hours required to complete the certificate program. The responses ranged from a low of 12 semester hours to a high of 41 hours. The average number of hours to complete a certificate is 29.1 semester hours. (In compiling the results, quarter hours were converted to semester hours.)

C. Schedule of Courses

Only 6% of the schools responding indicated that paralegal courses are offered exclusively during the day, while 47% indicated courses were offered only during the evening. The remaining 47% specified that courses were offered during both day and evening.

D. Composition of Students Enrolled in Paralegal Courses

Twenty schools provided information regarding the educational background of students enrolled in paralegal courses. The results are summarized as follows.

High School education only			394	(31%)
Post-secondary education				
Less than 1 year	209	(17%)		
Less than 2 years - more than 1	296	(24%)		
2 - 4 years	317	(25%)		
Graduate work	38	(3%)	860	(69%)
Total			1254	

The schools were asked to provide the male/female distribution of students enrolled in paralegal courses. The 25 schools responding to this question reported a total of 1706 students were enrolled in paralegal courses during the Fall of 1974. Of this number, 374 (22%) were reported to be male, while 1332 (78%) were reported to be female. It is interesting to note that only one school reported more than a 50% male population in paralegal courses. In addition, 86% of the schools responding indicated that more than 70% of their students were female.

Only 21 schools were able to provide the average age of the students enrolled in paralegal courses. The figures reported ranged from 19 years to 40 years with an average of 28 years.

E. Program Coordinator

Of the 32 schools completing the question on the existence of a paralegal program coordinator, 75% reported that they do have an individual designated as program coordinator. Of these schools, half (50%) reported the position is full-time and half (50%) indicated the position is part-time.

The schools which have a program coordinator indicated the individual has a background in the following areas:

Law only	8	(33%)
Education only	7	(29%)
Law *and* Education	9	(38%)
	24	

In addition to the categories mentioned above, 5 schools indicated their program coordinator has a background in business administration. It should be noted that 71% of the program coordinators have a background in law and 67% have some background in education.

Of the 8 schools which do not have a program coordinator, 5 specified that the Chairman of the Business Department has responsibility for the paralegal program.

F. Instructors

Thirty-three institutions specified the number of instructors teaching paralegal courses during the Fall of 1974. These institutions reported a total of 140 instructors, of which 123 (88%) were reported to be part-time. The backgrounds of these instructors is summarized below.

Lawyers	128	(91%)
Paralegals	7	(5%)
Judges	4	(3%)
CPA	1	(1%)
	140	

G. Internship

Of the 33 schools responding to this question, 15 (45%) reported that they do offer an internship program and 7 (21%) require their students to participate.

Questionnaires are still being submitted. A more complete and extensive report will be prepared when the additional data is received.

COMMUNITY AND JUNIOR COLLEGES WHICH CURRENTLY OFFER A PARALEGAL PROGRAM

March, 1975

ARIZONA

Phoenix College
1202 West Thomas Road
Phoenix, Arizona 85013
Dr. Theodore Borek
Chairman, Department of Business

Scottsdale Community College
Pima Road & Chaparral
Scottsdale, Arizona 85252
Mr. Don Werner
Director of Occupational & Career Education

CALIFORNIA

Canada College
4200 Farm Hill Boulevard
Redwood City, California 94061
Mr. Louis Yaeger
Chairman, Business Division

City College of San Francisco
San Francisco, California 94112
Mr. Joseph A. Lasky
Director of Legal Assisting Program

Humphreys College
6650 Inglewood Drive
Stockton, California 95207
Ms. Gladys Humphreys
Chairman, Secretarial & Paraprofessional Programs

Los Angeles City College
855 North Vernon Avenue
Los Angeles, California 90029
Dr. J.C. Weaver
Coordinator of Legal Assistant Program

Merritt College
12500 Campus Drive
Oakland, California 94619
Mr. Brian O. James
Department of Economics & Business

Orange Coast College
2701 Fairview Road
Costa Mesa, California 92626
Mrs. Jean Thompson
Associate Dean of Evening Division

Pasadena City College
1570 East Colorado Boulevard
Pasadena, California 91106
Mr. John R. Toothaker
Director, Occupational Education

West Valley College
1400 Fruitvale Avenue
Saratoga, California 95070
Mrs. Lois Kittle
Coordinator, Legal Assistant Program

COLORADO

Arapahoe Community College
5900 South Santa Fe Drive
Littleton, Colorado 80123
Mr. Lee Shapiro
Paralegal Program Coordinator

Community College of Denver
Auraria Campus
1201 Acoma Street
Denver, Colorado 80204
Ms. Jennie Rucker
Division Director, Community & Personal Services

El Paso Community College
2200 Bott Street
Colorado Springs, Colorado 80904
Mr. Leonard L. Green
Chairman, Department of Business

CONNECTICUT

Manchester Community College
P. O. Box 1046
Manchester, Connecticut 06040
Dr. David P. Greenberg
Coordinator, Legal Assistant Program

Post Junior College
800 Country Club Road
Waterbury, Connecticut 06708
Director of Continuing Education

FLORIDA

Hillsborough Community College
Tampa, Florida 33622
Mr. E. R. Mattson
Director, Career Programs

Manatee Junior College
5840 26th Street West
Bradenton, Florida 33505
Mr. Peter G. Choulas
Chairman, Department of Criminal Justice

Santa Fe Community College
P. O. Box 1530
Gainesville, Florida 32602
Mr. J. Pope Cheney
Director, Public Service Program

ILLINOIS

William Rainey Harper College
Algonquien and Roselle Roads
Palatine, Illinois 60067
Dr. Robert B. Cormack
Dean of Career Programs

MacCormac Junior College
327 South La Salle Street
Chicago, Illinois 60604
Mr. Gordon C. Borchardt
President

Mallinckrodt College
1041 Ridge Road
Wilmette, Illinois 60091
Ms. Alice C. Cornelius
Director, Legal Assistant Program

MARYLAND

Community College of Baltimore
2901 Liberty Heights Avenue
Baltimore, Maryland 21215
Dr. Frederick S. Lee
Director of General Studies

Dundalk Community College
7200 Sollers Point Road
Baltimore, Maryland 21222
Mr. Howard J. Wicker
Chairman, Division of Business & Industrial Management

Villa Julie College
Stevenson, Maryland 21153
Dr. Francis X. Pugh
Director, Legal Assistant Program

MASSACHUSETTS

Middlesex Community College
Bedford, Massachusetts 01730
Mr. Ralph G. Soderberg
Assistant Director of Continuing Education

MICHIGAN

Lansing Community College
419 North Capitol
Lansing, Michigan 48914
Dr. Ronald K. Edwards
Chairman, Accounting and Office Programs

Macomb County Community College
South Campus
14500 12 Mile Road
Warren, Michigan 48093
Dr. Margaret Rose
Director, Paralegal Technology

C. S. Mott Community College
1401 East Court Street
Flint, Michigan 48503
Dr. Peter K. Petro
Chairman, Business Division

MINNESOTA

North Hennepin Community College
7411 85th Avenue North
Minneapolis, Minnesota 55445
Mr. Fred Thwing
Director of Occupational Programs

MISSOURI

Florissant Valley Community College
Business Administration Division
3400 Pershall Road
St. Louis, Missouri 63135
Dr. Raymond Steitz
Campus Director of Legal Assistant Program

Meramec Community College
St. Louis, Missouri 63112
Mr. George Wary
Chairman, Business Administration Division

NEW JERSEY

Burlington County College
Pemberton - Brown Mills Road
Pemberton, New Jersey 08068
Mr. John P. Alexander
Assistant Professor, Business Studies Division
Coordinator, Legal Technology Program

Cumberland County College
P. O. Box 517
Vineland, New Jersey 08360
Dr. Philip S. Phelan
Dean of Instruction

NORTH CAROLINA

Central Carolina Technical Institute
1105 Kelly Drive
Sanford, North Carolina 27330
Ms. Carolyn Register
Chairperson, Paralegal Department

Davidson County Community College
Old Greensboro Road and Interstate 85
Lexington, North Carolina 27292
Ms. Lilona S. Schiro
Paralegal Instructor

Fayetteville Technical Institute
P. O. Box 5236
Fayetteville, North Carolina 28303
Mr. William O. Cameron
Associate Dean of Instruction

Southwestern Technical Institute
P. O. Box 95
Sylvia, North Carolina 28779
Dr. Michael Vaughn
Curriculum Head - Paralegal

OKLAHOMA
Oscar Rose Junior College
6420 Southeast 15th Street
Midwest City, Oklahoma 73110
Mrs. Carolyn Marshall
Instructor

OREGON
Clackamas Community College
19600 South Molalla Avenue
Oregon City, Oregon 97045
Mr. Lyle A. Reese
Director of Business Education & Related Programs

Lane Community College
Eugene, Oregon 97405
Mr. John W. Kreitz
Chairman, Business Department

Mt. Hood Community College
Gresham, Oregon 97030
Mr. John A. Dier
Business Division Chairman

Portland Community College
12000 S. W. 49th Avenue
Portland, Oregon 97219
Mr. Paul B. Bender
Government Services, Department Chairman

Rogue Community College
3345 Redwood Highway
Grants Pass, Oregon 97526
Mr. Edward Curtis
Chairman, Business Education Department

PENNSYLVANIA
Harrisburg Area Community College
3300 Cameron Street Road
Harrisburg, Pennsylvania 17110
Mr. William R. Ferencz
Chairman, Business & Management Services Division

SOUTH CAROLINA
Greenville Technical College
Box 5616, Station B
Greenville, South Carolina 29606
Mr. Richard S. Fisher
Department Head

TENNESSEE
Cleveland State Community College
Cleveland, Tennessee 37311
Dr. James M. Stubbs
Coordinator, Legal Assistant Program

TEXAS
Del Mar College
Corpus Christi, Texas 78404
Mrs. Candace May
Director of Legal Assistant Program
Mr. E. E. Walters
Assistant Dean for Applied Science Program

El Centro College
Main at Lamar
Dallas, Texas 75202
Mr. Carey Rector
Chairman of Business Division

VIRGINIA
Ferrum College
Ferrum, Virginia 24088
Dr. James A. Davis
Academic Dean

J. Sargeant Reynolds Community College
Parham Road Campus
1651 East Parham Road
Richmond, Virginia 23230
Mr. Bob Grymes
Director of Continuing Education

Virginia Western Community College
3095 Colonial Avenue, S. W.
Roanoke, Virginia 24015
Ms. Martha B. Brown
Program Chairman, Secretarial Science, Division of Business

WASHINGTON
Edmonds Community College
2000 68th Avenue West
Lynwood, Washington 98036
Mr. Vincent DeLeers
Dean of Instruction

Spokane Community College
E3403 Mission Avenue
Spokane, Washington 99202
Mrs. Jonnie Owens

American Bar Association Special Committee on Law Assistants
List of Institutions Offering Paralegal Training

September 1974

As a result of the growing interest in the legal assistants field and the substantial number of inquiries, the following list of legal assistants training course has been developed.

The ABA has not yet accredited or approved any legal assistants courses. Accordingly, this list should not be in any way interpreted as an endorsement or approval of any specific courses or institutions.

ARIZONA

The Sterling School, 3003 North Central Avenue, Phoenix, AZ 85012, Ruby Sterling
Northern Arizona University, Faculty Box 5712, Flagstaff, AZ 86001, Garland Downum
Phoenix College, 1202 W. Thomas Road, Phoenix, AZ 85013, Dr. Ted Borek
Scottsdale Community College, Scottsdale, AZ 95252, Dr. Donald Werner

CALIFORNIA

California State University at Los Angeles, 5151 State University Dr., Los Angeles, CA 90032, John E. Deering
Law Center, University of Southern California, Los Angeles, CA 90007, Elizabeth Horowitz
Los Angeles City College, 855 North Vermont Ave., Los Angeles, CA 90029, John Weaver
University of West Los Angeles School of Paralegal Studies, 11000 West Washington Blvd., Culver City, CA 90230, David Prescott
UCLA, University Extension, Dept. of Daytime Programs and Special Projects, 10995 LeConte Ave., Los Angeles, CA 90024, Alice LeBel
Merritt College, 12500 Campus Drive, Oakland, CA 94619, Brian O. James
Lone Mountain College, Graduate School Law Center, 2800 Turk Blvd., San Francisco, CA 94118, Mel Sager
Dominican College of San Rafael, San Rafael, CA 94901, Henry Aigner
Pepperdine University, Legal Studies Program, 8035 S. Vermont Ave., Los Angeles, CA 90044, Stephen Nelvin
McGeorge School of Law, University of the Pacific, 3200 Fifth Ave., Sacramento, CA 95817, Gary L. Vinson
City College of San Francisco, 51 Phelan Ave., San Francisco, CA 94112, Joseph Lasky
Canada College, 4200 Farm Hill Blvd., Redwood City, CA 94061, Louis Yaeger
Fullerton College, 321 East Chapman Ave., Fullerton, CA 92634 Dr. Betty A. Flynn
Humphreys College, Stockton, CA 95207, Gladys Humphreys
Orange Coast College, Costa Mesa, CA 92626, Frances M. Potter
Pasadena City College, 1570 E. Colorado Blvd., Pasadena, CA 91106, J. R. Toothaker

CALIFORNIA (Continued)

Southwestern College, 900 Otay Lakes Road, Chula Vista, CA 92010, Martin Carlsen

Ventura County Community College District, 71 Day Road, Ventura, CA 93003, Dr. William H. Lawson

COLORADO

Araphahoe Community College, 5900 S. Santa Fe Dr., Littleton, CO 80120, Harvey Rothenberg

Community College of Denver-Auraria Campus, 1201 Acoma St., Denver, CO 80204, Alfred Tate

University of Denver College of Law, 200 W. 14th Ave. Denver, CO 80204, Lee J. Shapiro

Southern Colorado State College, 900 West Ormon, Pueblo, CO 81004, Wayne Bowman

CONNECTICUT

Manchester Community College, P. O. Box 1046, Manchester, CT 06040, David P. Greenberg

Hartford College for Women, 500 Elizabeth St., Hartford, CT 06105, Mrs. Ruth Bergengren

DISTRICT OF COLUMBIA

Antioch School of Law, 1624 Crescent Pl. N.W., Washington, DC 20009, William Statsky

George Washington University, College of General Studies, 2029 K St., N.W., Washington, DC 20006, Jan Dietrich

Georgetown University, Washington, DC 20007, Steve McConnell

FLORIDA

Paralegal Institute of Florida, 16766 Northeast 5th Ave., North Miami Beach, FL 33162, Milton I. Starkman

Santa Fe Community College, P. O. Box 1530, 3000 N.W. 83rd St., Gainesville, FL 32601, J. Pope Cheney

Florida Technological University, Allied Legal Services Program, Box 25000, Orlando, FL 32816, Robert E. Boyer

Broward Community College, Ft. Lauderdale, FL 33314, James McGowan

Hillsborough Community College, Tampa, FL 33606, William Tripp

Pasco-Hernando Community College, Dade City, FL 33525, Dr. James Culligan

ILLINOIS

William Rainey Harper College, Palatine, IL 60067, R. Duane Slayton

MacCormac Junior College, 327 S. LaSalle St., Chicago, IL 60604, Edward M. Kohler

Roosevelt University, 430 S. Michigan Avenue, Chicago, IL 60605

Tri-Para, Ste. 2157, 111 W. Washington, Chicago, IL 60602, David Bryant

Chase Professional Center, 188 W. Randolph, Chicago, IL 60602 George J. Bakalis

Mallinckrodt College, 1041 Ridge Rd., Wilmette, IL 60091, Mrs. Cornelius

Lewis & Clark Community College, Godfrey, IL 62035, J.D. Schweitzer

KENTUCKY

Salmon P. Chase College of Law, 1401 Dixie Highway, Covington, KY 41011, Martin J. Huelsman

MARYLAND

The Para-Legal Institute, Suite 301, 912 Thayer Avenue, Silver Spring, MD 20910, Mary Anvari

Villa Julie College, Greenspring Valley Road, Stevenson, MD 21153, Francis X. Pugh

Montgomery College, Rockville, MD 20850, Mrs. Jean Lomax

MASSACHUSETTS

University of Massachusetts, 100 Arlington St., Boston, MA 02125, David Matz

University of Massachusetts, Room 104, Hills North, Amherst, MA 01003, Harvey Stone

Bentley College, Center for Continuing Education, Beaver & Forest Sts., Waltham, MA 02154, Renee Fine

Middlesex Community College, Springs Road, Bedford, MA 01730, Frederic B. Viaux

Hampshire College, Amherst, MA 01002, Oliver Fowlkes, David Kerr

MICHIGAN

Ferris State College, Big Rapids, MI 49307, Willard R. Terry

Macomb County Community College, South Campus, 14500 Twelve Mile Road, Warren, MI 48093, Dr. Margaret Rose

Grand Valley State Colleges, College Landing, Allendale, MI 49401, Ricardo Meana

Mott Community College, 1401 East Court St., Flint, MI 48503, Shaker Brackett

Gogebic Community College,Ironwood, MI 49938, Gene Dahlin

Lansing Community College, Lansing, MI 48914, Robert Bouck

Southwestern Michigan College, Dowagiac, MI 49047, Dr. William Spencer

Michigan Paraprofessional Training Institutes, Inc., 1729 David Stott Bldg., Detroit, MI 48226, Mrs. Marina V. Katrompas

MINNESOTA

University of Minnesota, The General College, Minneapolis, MN 55455, Roger A. Larson

North Hennepin State Junior College, 7411 85th Ave., N., Minneapolis, MN 55455, Larry Bakken

MISSOURI

Meramec Community College, 11333 Big Bend, St. Louis, MO 63122, George Wang

William Woods College, Fulton, MO 65251, Director of Administrations

Florissant Valley Community College, St. Louis, MO 63135, Dr. R. E. Steitz

Rockhurst College, Evening Division, 5225 Troost Ave., Kansas City, MO, Dr. Otis Miller

NEBRASKA

Lincoln School of Commerce, 1821 K St., P. O. Box 82826, Lincoln, NB 68501, Arthur Tschetter, Director of Education
Metropolitan City College, 4469 Farnam Street, Omaha, NB 68131, Merle Gier

NEVADA

Reno Junior College of Business, Wells and Wonder, Reno, NV 89502, Don A. Thompson

NEW JERSEY

Cumberland County College, P. O. Box 517, Vineland, NJ 08360, Philip S. Phelon
Burlington County College, Pemberton, NJ 08068, C. DeWitt Peterson

NEW YORK

College for Human Services, 201 Varick St., New York, NY 10014
New York University, Shimkin Hall, Room 332, 50 West 4th St., New York, NY 10003, S. Theodore Reiner
Paralegal Institute, 132 Nassau St., New York, NY 10038, Carl E. Person
Adelphi University, The Lawyer's Assistant Program, Division of Continuing Education, Garden City, L.I., NY 11530, Lilly Cohen

NORTH CAROLINA

Catawba Valley Technical Institute, Hickory, NC 28601, Ray Hall
Central Carolina Technical Institute, 1105 Kelly Drive, Sanford, NC, Carolyn Register
Davidson County Community College, Lexington, NC 27292, Grady E. Love
Kittrell College, Kittrell, NC 27544, Leslie Baskerville

OHIO

Capital University, 2199 E. Main St., Columbus, OH 43209, John W. McCormac
Ohio Paralegal Institute, 344 Cleveland Plaza, Euclid & E 12th St., Cleveland, OH 44115, Michael T. Jelepis

OKLAHOMA

Oscar Rose Junior College, 6420 Southeast 15th St., Midwest City, OK, Mrs. Carolyn Marshall
Tulsa Junior College, Tulsa, OK 74119, Bill Wells

OREGON

Mt. Hood Community College, 2600 S.E. Stark St., Gresham, OR 97030, John A. Dier
Portland Community College, 12000 S.W. 49th Ave., Eugene, OR 97405, Paul B. Bender
Lane Community College, 4000 E. 30th Ave., Eugene, OR 97405, John Kreitz

OREGON (Continued)

Clackamas Community College, Oregon City, OR 97045, Robert F. Lilly
Oregon State Department of Education, 942 Lancaster Drive, N.E., Salem, OR 97310, Al Halter

PENNSYLVANIA

The Institute for Paralegal Training, 235 South 17th St., Philadelphia, PA 19103, Paul Shapiro
Central Pennsylvania Business School, Campus on College Hill, Summerdale, PA 17093, Donald B. Owen

SOUTH CAROLINA

Greenville Technical Education Center, P.O. Box 5616 Station B., Greenville, SC 29606, R.S. (Nick) Fisher

TENNESSEE

Cleveland State Community College, Cleveland, TN 37311, James M. Stubbs
Aquinas Junior College, Nashville, TN 37205; Thomas P. Wall

TEXAS

Delmar College, Baldwin & Ayers, Corpus Christi, TX 78404, Candace May

UTAH

University of Utah, Carlson Hall, Salt Lake City, UT 84112, Kline D. Strong

VERMONT

Champlain College, 232 S. Willard St., Burlington, VT 05401, Dr. R. Austin Skiff

VIRGINIA

J. Sargeant Reynolds Community College, Richmond, VA 23230, Dr. Bob T. Holland
Ferrum College, Ferrum, VA 24088, James A. Davis

WASHINGTON

Edmonds Community College, 2000 68th Ave. West, Lynnwood, WA 98036, Lorraine R. Goldberg
City College, 403-405 Lyon Building, Seattle, WA 98104 Michael A. Pastore
Spokane Community College, E3403 Mission Ave., Spokane, WA 99202, Mrs. Jonnie L. Owens
Bellevue Community College, Bellevue, WA 98007, Daniel J. LaFond

APPENDIX F

OPENING NEW CASE FILES: THE "CLIENT INFORMATION FORM" AND THE MULTI-PROCESSOR FORM"

Techniques to handle the work of a defender office thoroughly and efficiently and the use of defender paralegals are two complementary ideas being pursued independently and collectively in many defender offices. The forms which follow were designed with the first goal in mind and can be adapted to any defender office, even those without paralegals. Yet it is clear that they will be most useful in offices which have a full complement of paralegals and secretaries.

The basic idea behind the forms is to systematically collect very complete information on every new client as soon as it is possible to do so (the Client Information Form), and then to transfer much of the basic information onto a pre-printed, tearout form (the Multi-processor Form) so that the defense attorney can later delegate assignments to his support staff with a minimum of effort. These constitute a methodical way of "getting on top of your case early"; the extra work required to set up new case files in this manner is more than repaid in decreased work and consistent thoroughness of case preparation later on.

The forms and accompanying text were originally prepared for the staff of the Public Defender Service in Washington, D.C. Note that the language indicates that the office expected attorneys, not paralegals, to conduct the initial client interview. As is noted in this manual, it may be preferable to have a paralegal perform much of this information-gathering function.

Use of the Client Information Form and the Multiprocessor Form

As part of its LEAA project on the use of paralegals, Blackstone Associates has developed two forms to regularize the flow of paperwork within the Public Defender Service. The following discussion will explain our goals and our plan for the use of the forms. Prototype instructions for the individual forms are included as an appendix.

The Goal of the Forms

We began with the assumption that many of the tasks involved in the representation of a client need not actually be performed by the attorney. Of course, this is the assumption upon which the hiring and training of the Attorney Aides was predicated and we wholeheartedly agree with it. If tasks are to be delegated, the information needed by the support staff to follow through on the delegation must be communicated clearly and concisely. Much of the resistance to the use of paralegals has resulted from the sheer effort involved in this communication process: by the time the attorney has located and written down or dictated all the necessary information, he might as well have done the task himself (or so it seems). Efficient communication between a large group of attorneys and numerous paralegals requires that the information upon which the paralegals will act be organized into a common format even before the need to communicate it arises; this eliminates the need to locate or organize any information solely for the purpose of delegation.

Information is most easily organized at the time it is first collected and written down. This suggested the use of an interview form—the Client Information Form— by P.D.S. attorneys during their initial contacts with a client. We recognized, however, the danger inherent in any attempt to straightjacket the attorney into some sort of "standard interview", an "improvement" which would certainly make the attorneys' job more difficult rather than easier. Accordingly, we have designed a suggestive form to guide the attorney during the client interview, one which organizes the topics which are typically covered in such an interview but which does not limit its scope. Fortunately, even the suggestive interview form has the most important advantage of a form compared with a legal pad: someone else who must find a common piece of information, such as the court number, will find that information in the same place on every form regardless of the attorney who conducted the interview. (Of course, someone trying to find out what the client's mother wore on the night in question will have the same unavoidable problems as with the legal pad approach, but you get the point.)

At this point in our thinking, two aspects of the interview form were fixed: it would be handwritten by the attorney conforming in many respects to his individual style of interviewing and, as a result, would be a unique original unavailable (and somewhat unsatisfactory) for distribution to those who would need the information it contains. Although it has succeeded in getting the job half done, another step is needed to make the information legible and put it in a form ready for distribution: the Multiprocessor Form.

As the name implies, the Multiprocessor Form is a bound set of pages or leaves, each of which has a different function (although some are copies): its purpose is to provide, *in one typing*, all of the basic information which is likely to be needed by the various people who support the attorney: investigators, O.R.D., the Attorney Aides, and the administrative staff. The last leaf is a card which the attorney can use as part of a personal tickler system if he wants to set one up. The attorney's secretary, or specially designated secretaries, will complete the Multiprocessor Form by collating the information on the Client Information Form (the interview form) and on other available documents such as the complaint and bail agency report.

Our Plan for the Use of the Forms

The Client Information Form is a double-size 8½" x 14" sheet which is folded at the top (like a tax return) and punched for attachment to a file folder; the back pages are printed upside down so that they may be easily read once the form has been attached to the folder. The information called for on the CIF follows the format most generally used by PDS attorneys: personal information, the various kinds of bond information, and finally (on the inside) information concerning the incident that precipitated the arrest. The design of the form and the information called for has been guided throughout by the advice of several experienced PDS attorneys, but there is no question that the final design, like any design we might have adopted, is a compromise between (1) the utility of specifying a location and unambiguous description of various bits of information (and, incidentally, of providing a checklist useful for novice and expert alike of things that should be considered during an interview) and, (2) the annoyance of any form which calls for specified information which may not be entirely relevant and which may appear to ignore the fact that no two cases are the same. We hope that we've done a creditable job of compromise but the ultimate judgment is yours, since no one else will make use of the form except the person who is responsible for completing the Multiprocessor. So, as long as the rudimentary kind of information called for on the Multiprocessor is in its proper place on the CIF, you can ignore whatever displeases you about the CIF. But if you find that some aspect of the CIF has been botched, by all means bring the defect to the attention of Mr. Lefstein, who will incorporate your suggestions into the second edition.

In addition to the straightforward information-organizing function of the CIF, we have added two others: a checklist of items which should have been obtained during the initial-interview, initial-hearing process, and an assignment block which orders various documents which may be relevant to the case but which must be sent for. The assignments (drafting letters, subpoeneas, and request forms) are carried out by the secretary who prepares the Multiprocessor.

To illustrate our plan for the use of the forms, here is a chronological description of how a case would be handled in its early stages:

On his assigned "pick-up" day, the attorney assembles a supply of file folders, each containing a CIF, blank medical and general releases, PD 251 request forms, etc. After receiving his assignments, the attorney interviews each client, using the CIF (information available on the bail agency report or the complaint does not have to be entered on the CIF except for the attorney's reference), and the client is asked to sign whichever release forms are relevant to his case. During his waiting time, the attorney can complete the PD 251 request form and transfer to the CIF the information appearing on other papers he has received. Before leaving the courtroom, the attorney goes over the checklist to determine that he has all of the information and documents then available (e.g., the CCR No. the complaint, the NTA report, and the other items listed). Either then or upon returning to the office, the attorney notes the results of the initial hearing on the CIF and indicates in the Assignment section which documents must be sent for. When the CIF is completed, the attorney hands it to his secretary (or another assigned to the task) so that the Multiprocessor can be typed up and the assignments carried out. Before the day is over, the attorney should have the completed Multiprocessor and the assignments on his desk for signature. The attorney then fills out whichever portions of the Multiprocessor are required (Request for Investigation, ORD Referral, Aide Assignment), routes one copy to the proper support person and retains a copy in the file. The next to last leaf of the Multiprocessor is a new case report which needs only to be routed to Anita Karcher. The last leaf is the attorney's tickler copy and can be used in a personal tickler system by writing on the lower half the next tasks to be done on the matter and placing it in a file box under the date on which the attorney wishes to be "tickled." When the Investigator, ORD or Aide assignments are completed, they will be reported to the attorney on the leaf of the Multiprocessor which was originally sent or with that leaf attached to a separate report. The attorney will continue to use the file jacket to record the "Proceedings" in the matter and may record whatever of the other basic information he finds is usefully recorded on the outside of the file jacket (of course, it is all available on the file copy of the Multiprocessor or on the CIF, but in some cases it may be more convenient to have it available without opening the file jacket).

More detailed instructions on the use of each of the forms is included in the Instructions on the Use of the CIF and Multiprocessor Forms.

1

PUBLIC DEFENDER SERVICE

FOR THE DISTRICT OF COLUMBIA
601 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 628-1200

CLIENT INFORMATION FORM (CIF)

ATTORNEY:		APTMT: DATE/TIME
CLIENT'S LOCATION		
LOCK-UP #	CCR #	DCDC #
COURT #	DATE OF INTERVIEW	

FULL NAME OF CLIENT	MIDDLE	LAST	RACE	SEX	DATE OF BIRTH	AGE
CLIENT'S NICKNAME(S)			PLACE OF BIRTH			
STREET ADDRESS			APT. NO.	TELEPHONE		
LIVING WITH			HOW LONG?	D.C. RESIDENT FOR		
LANDLORD	ADDRESS	PHONE	ID'S AVAILABLE: (DR. LIC., CREDIT CARDS, MILITARY, STUDENT, UNION, INS., MED.)			
FORMER ADDRESSES (WITH DATES)						

LINE OF WORK		CURRENT EMPL. STATUS	MONTHS ON CURRENT JOB

LATEST JOB	EMPLOYER'S NAME		SUPERVISOR	
	ADDRESS		TELEPHONE	WILL TAKE BACK ☐ ☐ WILL COME TO COURT ☐ ☐
	JOB TITLE	EARNINGS/WAGES	DATES OF EMPLOYMENT	
PRIOR JOB (FOR OTHERS SEE P.3)	EMPLOYER'S NAME		SUPERVISOR	
	ADDRESS		TELEPHONE	WHY LEFT?
	JOB TITLE	EARNINGS/WAGES	DATES OF EMPLOYMENT	
PRIOR JOB (FOR OTHERS SEE P.3)	EMPLOYER'S NAME		SUPERVISOR	
	ADDRESS		TELEPHONE	WHY LEFT?
	JOB TITLE	EARNINGS/WAGES	DATES OF EMPLOYMENT	

WELFARE	PER MONTH $	CASE WORKER	PHONE NO.	JUV: WILL FAMILY TAKE CUSTODY? YES ☐ NO ☐

EDUCATION	VOCATIONAL TRAINING

MILITARY: BRANCH	SERIAL #	HIGHEST RANK	DISCHARGE DATE	MEDALS	COURT MARTIALS	☐ OVERSEAS ☐ COMBAT	TYPE DISCHARGE

FAMILY TIES IN DC	SPOUSE	CEREMONY ☐ YES ☐ NO	ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	GIRL FRIEND	COMMON LAW ☐	ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	MOTHER		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	FATHER		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	SIBLINGS		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	SIBLINGS		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	SIBLINGS		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
	GRAND PARENT		ADDRESS	HOME PHONE	WORK PHONE	AT CT ☐
CIRCLE CONTACT	CHILDREN (AGES)	LIVING WITH				
	OTHERS (FRIENDS, CO-WORKERS, TEACHER, MINISTER)					

PHYSICAL DESCRIPTION (INC. CLOTHES WHEN ARRESTED)

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P

NOTES ON INITIAL HEARING

DATE OF INITIAL HEARING

JUDGE

AUSA PHONE

NEXT DATE FOR

LOCATION OF INCIDENT DATE OF INCIDENT DATE OF ARREST

TIME WEATHER/LIGHTING

ARRESTING OFFICER(s) ☐ FOOT ☐ CAR

CO-DEFENDENT/ATTY CCR # CHARGES STATEMENT ☐

☐

☐

HOSPITAL TIME OF ARRIVAL

☐

WHAT DID YOU TELL THE COPS? DO POLICE CLAIM THEY HAVE ANY EVIDENCE?

☐ SIGNED RIGHTS CARD
☐ WERE COLOR SLIDES TAKEN
☐ SEARCH OF ARR. PREMISES
☐ SUPPRESSABLE
☐ GAVE WRITTEN STATEMENT
☐ PROP. RECOVERED IN SEARCH

MONEY WHEN ARRESTED
$

COMPLAINANT'S NAME LIVING WITH

ADDRESS APT # PHONE

PHYSICAL DESCRIPTION

WITNESSES: (WHETHER RECORD)

RECORD ☐

RECORD ☐

RECORD ☐

RECORD ☐

RECORD ☐

RECORD ☐

NARRATIVE

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3

PRIOR JOB

EMPLOYER'S NAME
SUPERVISOR
ADDRESS
TELEPHONE
WHY LEFT?
JOB TITLE
EARNINGS/WAGES
DATES OF EMPLOYMENT

PRIOR JOB

EMPLOYER'S NAME
SUPERVISOR
ADDRESS
TELEPHONE
WHY LEFT?
JOB TITLE
EARNINGS/WAGES
DATES OF EMPLOYMENT

NOTES ON ASSIGNMENTS

ASSIGNMENTS

	ASSIGN TO	DONE BY	DATE	RET'D
☐ P.D. 251				
☐ Client's Arrest Record				
☐ Complainant's Arrest Record				
☐ Witnesses' Arrest Records				
☐ Hospital Records – Which?				
☐ Prison Records – Which?				
☐ Radio Run Date Time Car				
☐ NTA Report and Records				
☐				
☐				
☐				

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PHYSICAL HEALTH

PHYSICAL CONDITION SINCE

EVER HOSPITALIZED? HOSPITAL/INSTITUTION WHY? DATES

EVER USE NARCOTICS/KIND LAST USE AMOUNT

NARCOTICS TREATMENT LOCATION DATES RESULTS CONTACT

ALCOHOL: RCA DATES ANTIBUSE? CONTACT/COUNSELOR
DETOX

OTHER CHARGES

OTHER CHARGES CURRENTLY PENDING ARREST DATE BOND COURT JUDGE STATUS ATTORNEY TIMES APPD

KNOWN DETAINERS

PRIOR RECORD

DATE	CHARGE	JURISD.	COURT	ATTORNEY	DISPOSITION	DATE RELEASED	PAR/PROB
							☐
							☐
							☐
							☐
							☐

PAROLE/PROBATION OFFICER PHONE ENDING DATE LAST REPORTED

COMMENTS (REPORTING, GROUP SESSIONS, WORKING, DRUGS, STABLE FAMILY)

THIRD PARTY CUSTODIAN IDEAS (RELATIVES, BONABOND, NTA, EMPL., UNION, BLACKMAN'S, MINISTER, TEACHER)

BOND

HOW MUCH IN COURT TODAY? CLIENT $ FAMILY AND OTHERS $ BOND SET AT $ ☐ SURETY ☐ CASH ☐ DEPOSIT %

WHO CAN GET MORE? NAME ADDRESS PHONE

EVER FORFEITED/FAILED TO APPEAR?

FOLLOW-THROUGH: P.R. ☐ NO COND. ☐ REP. TO B.A. ☐ MAINT. RESID. ☐ JOB W/IN _____ DAYS ☐ CONTINUE SCHOOL ☐ AVOID COMPLAINANT ☐ OTHER (SEE COMMENTS)

LINEUP

SET FOR DATE TIME ☐ OBJECTION MADE ON RECORD DATE

NOTES FOR COUNSEL

COMMENTS:

CHECK LIST

- ☐ Complaint
- ☐ Warrant & Aff's
- ☐ Bail Agency Report
- ☐ Bond Order
- ☐ Praecipe
- ☐ Line-up Order
- ☐ NTA Report
- ☐ General Release
- ☐ D.C. Gen. Release
- ☐ Set Interview
- ☐ Advice of Rights
- ☐ Line-up Advice
- ☐ ______
- ☐ ______
- ☐ ______

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Instructions on the Use of the Client Information Form

The Client Information Form (CIF) is intended to be a suggestive interview form for initial interviews in criminal cases. Despite appearances, there is not "a place for everything" on the form and it would be a most unusual case in which all of the information specified on the form would be relevant or even desirable. This means that the form is not a straightjacket or a game plan for the "typical interview." While it contains and begins to organize the *kinds* of information which are commonly sought in an initial interview, the attorney must put just as much effort, attention, and skill into the interview as he would in the absence of a form. The principal purpose of the form is to establish a consistent location within your interview notes for the kinds of basic information needed by others; this information will later be transferred to the Multiprocessor Form. Therefore, beyond this basic information, the CIF is yours to do with as you please. After you have become accustomed to the arrangement of topics on the CIF, we think you'll easily interview in any order that the circumstances of the individual case demand, skipping anything that is not required.

Of course, the form was designed to be self-explanatory and there isn't much which qualifies as indispensable instruction. But a few notes on some of the things we had in mind may make the CIF a little easier to master quickly:

1. The order of intended use of the pages is: a) the front page, b) the back page (just flip the entire form over), c) the reverse of the front page and, finally, d) the reverse of the rear page (containing the assignment section and a lot of empty space for your notes). We concluded that the bail information should appear on the front and back pages because it is easier to flip over the whole form than to turn pages in the cell-block and in court.

2. In the upper left hand corner of the first page are several important numbers. Of course, there are other numbers but these seemed to be the critical ones. The others you can put in the white space surrounding the name of your employer or on the file jacket (you don't learn most of the others until later, anyway). Be sure to put the *name* of the court *and* the court number in the box marked "Court #".

3. The line beginning "Line of Work" is a quick once-over; the employment status (employed full-time, part-time, occasionally, or not at all) and the months-on-current job are all covered below in a more detailed way. The line is intended for those situations when you *know* you can't do a complete interview the first time around.

4. At the end of each line concerning a family member is a box labelled "AT CT" to be checked if that family member was in court at the initial hearing. A number of PDS attorneys have found that this information is frequently helpful later on—and easily forgotten.

An additional suggestion: when interviewing the client, determine which of the family members is *expected* to be in court and circle the "AT CT" box. Then when that person's presence is confirmed, check the box. With this technique, you will not forget to locate members of the client's family who were expected and can make appropriate representations at the hearing. You'll also know later who was supposed to show but didn't.

5. On page 4 (the rear page), under the heading "Other Charges," you'll probably find that the second line labelled "Known Detainers" is more useful as a place to enter a second set of charges currently pending.

6. In the next section, "Prior Record," the boxes at the end of the lines don't have any established definition—you can establish your own convention for them depending on what information about prior arrests is of most interest. They could simply be checked if the disposition or release on a prior charge did involve probation or parole, or you can enter the ending date of any probation or parole under that heading and use the boxes as a quick reference to those which are still in effect.

7. Note the checklist at the bottom of Page 4. This is to remind you to get certain items and bring them back from court. If an aide is doing your bail interview, you can have him secure these items.

8. On page two, the sections concerning the incident and arrest are the vaguest of all but will be useful as a condensed checklist of areas which are often profitably covered.

The rest of the form is blank. The assignment section is pretty straightforward—if you know in advance who will be filling out the Multiprocessor, you don't even have to fill in the "assign to" column.

Many of the best ideas on the use of the CIF are bound to come from PDS attorneys as they begin to improvise with the form. For that reason, we encourage you to find out how others are bending the form to their own purposes; and tell them your transgressions. The second edition will benefit from your suggestions.

Instructions for CIF Assignments

1. PD 251: The PD 251 is requested on MPD form PD 24 (the form for requesting arrest records of clients) by adding in the upper left hand corner "Also PD 251: CCR #XXX-XXX. Complainant: [John Doe]". See the next instruction for details.

2. *Client's Arrest Record:* The client's arrest record is requested on MPD form PD 24. Fill in the form from the information supplied in the CIF. Stamp the rear of the form with the legend:

"I hereby certify that I am an attorney authorized to practice law in the District of Columbia and that I have been appointed or retained to represent the person named on the reverse side who is a defendant is a criminal matter now pending before the court. ____________________ "

Date (Attorneys sign above)

If a PD 251 is needed, it should be requested on this form (see previous instruction).

Since the form must be signed twice by the attorney (on the front: "Signature of requesting person", and on the rear as part of the stamp), return the form to the attorney.

All information needed is in the top lines of Page 1 of the CIF, except for the complainant's name, which is in the middle of Page 2.

The forms are collected daily and delivered to the Records Division, Metropolitan Police Department. The arrest record (and PD 251, if requested) should be returned in 7 days.

3. *Complainant's arrest record:* The complainant's arrest record is obtained by subpoena directed to: "Chief of Police or his designated representative, Attention: Records Division".

For Superior Court: Fill out an original and three copies of pre-stamped and pre-sealed Form C-30, "Criminal Supoena."

1. Type in at the very top next to "Criminal Subpoena" the words "IN FORMA PAUPERIS" in caps.
2. In the two blank lines of the body of the subpoena, type "please direct to the MPD Liaison Office the arrest record of [name of complainant], [born on], [sex], [race], by [return date at least 7 days away]."
3. Write on the last copy in the upper right hand corner: "Messenger's Tickler."
4. Clip the original and two copies together.
5. Complete a "U.S. Marshall's Instruction and Process Record" (U.S.M.-285).
6. Give all subpoenas and Marshall's form to the messenger for delivery.

For District Court:

a. Fill out an original and two copies of "Motion under Fed. Criminal Rule 17 (b)" entitled "Motion for Issuance of Subpoena."

1. Fill in the defendant's name and the Criminal No. in the caption. Enter the defendant's name on the blank on the first line of the body.
2. On the first of the four lines after the words ". . . the following names witnesses" type in "name of Chief of Police or his authorized representative."
3. Leave the remainder of the form blank.
4. Return the forms to the attorney for his signature.

b. Fill out an original and three copies of "Subpoena to Produce Document or Object" (Cr. Form No. 21).

1. Enter the defendant's name and the Criminal No. in the caption.
2. After the word "To:", enter "name of Chief of Police, or his authorized representative, 300 Indiana Ave., N.W., Washington, D.C. 20001."
3. 2nd line: "District of *Columbia* at *Police Liaison Office* in the city of."
4. 3rd line: "*Washington, D.C.* [enter the return day: at least 7 days away].
5. 4th line: enter the defendant's name.
6. In blank space: "the arrest record of [name of complainant] of [address], [sex], [race], [date of birth].
7. Last line: ". . . application of the *defendant.*"
8. Enter the date, name, address and telephone number for P.D.S. in the lower left-hand corner.
9. Write on the last copy in the upper right-hand corner: "Messenger's Tickler."
10. Clip the original and two copies together.

c. Complete a "U. S. Marshall's Instruction and Process Record" (U.S.M. - 285).

d. Give all subpoenas and Marshall's form to the messenger for delivery.

4. *Witnesses' Arrest Records:* A witness' arrest record is obtained through the same subpoena process as for complainants' arrest records (see previous instruction).

5. *Hospital Records:* Hospital records may be obtained *on the day of trial* by subpoena directed to "The Custodian of Records, [name of hospital]", returnable at the courtroom on the day of trial. Specify: "Bring with you the complete medical records and institutional records of [name of defendant or witness]."

Hospital records desired in advance of trial may be obtained from various hospitals in various ways. The most difficult is D.C. General. Arrangements can generally be made by the attorney if a signed release form is available.

The pre-trial procedure for *St. Elizabeth's Hospital:* prepare subpoena forms directed to "Medical Records Librarian, Saint Elizabeth's Hospital, Washington, D.C." Direct pre-trial subpoenas for records from other hospitals to the equivalent to the Medical Record's Librarian; get title from the attorney.

All pre-trial subpoenas for hospitals should read: "You are hereby commanded to appear *at the Public Defender Service, 5th floor, 601 Indiana Avenue, N.W.*, of the District of Columbia. . . as a witness for *the defendant. Bring with you the complete medical records and institutional records of [name of defendant or witness]. This material may be inspected and copied by counsel for the defendant. This subpoena may also be complied with by delivering the above materials to any employee of the Public Defender Service.*"

6. *Prison Records:* Prison records may be obtained by telephone call or letter to "The Custodian of Records, [name of institution]" accompanied by a release form signed by the defendant.

7. *Radio Run:* Radio run transcripts may be obtained by subpoena directed to Chief of Police, or his authorized representative, 300 Indiana Ave., N.W., Washington, D.C. 20001". (See instruction three.)

The body of the subpoena should read: "Transcriptions of any and all communications broadcast over any channel (including D.O.D.) of the Metropolitan Police Radio concerning a [describe offense: e.g., sexual assault of Jane Doe] alleged to have taken place at or near [location] at or about [time] on [date]."

"Cruiser [car #] responded to the scene about [time]. CCR # XXX-XXX."

8. *N.T.A. Reports:* N.T.A. reports may be obtained by sending a letter to Dr. James Washington, Narcotics Treatment Administration, 613 "G" St. N.W., Washington, D.C., along with a release form signed by the client.

The letter should read: "Please forward narcotic treatment records of [name of defendant] to me at the above address. I am enclosing a signed release."

9. *Client's Written Statement:* The attorney should obtain this document by communicating directly with the Assistant U.S. Attorney.

Instructions on the Use of the Multiprocessor Form

The Multiprocessor Form which follows these instructions is designed to give a lot of people a lot of information with as few keystrokes as possible. But, because the form is not very self-explanatory and will be relied on many times in the course of the typical case, it is of more than usual importance that it be completed correctly.

The MPF originates with a secretary when an attorney who has just interviewed a new client makes available the completed Client Information Form and all the documents received at the initial hearing. The information required for the MPF is taken from these documents and where it appears more than once in them it should be cross-checked to be certain that no errors have been made in copying information anywhere in the chain.

The portion of the MPF into which this information is typed is divided into two columns. The left column is intended in some cases to take two pieces of information, one flush to the left and the other flush to the right. Therefore, the typewriter should be tabbed to allow the convenient entry of the second piece of information. For example, on the first line is the notation "Name/DOB" calling for the client's full name and date of birth as follows:

Name/DOB	
Address	
Apt # /Phone	

	PDS Attorney
	Court
	Case #
	DCDC #
	CCR #

As you can see, the date of birth will never be more than 8 characters and the other flush-right information on the subsequent lines (the client's telephone number, the relationship of the "contact" to the client, the date of employment on the client's current job) will require no more. Therefore a tab should be set at column 50 (pica type, with a left hand margin set at 22).

Line by line specifications for the Multiprocessor follow.

LEFT COLUMN

1. Full name of the client; the last name should be in ALL CAPS, e.g., William Charles JONES. The client's date of birth should be indicated, flush right, in arabic numbers, e.g., 12/15/40.
   (CIF page 1: top)
2. Client's full address, e.g., 1234 Connecticut Ave., N.W.
   (CIF page 1: top)
3. Apartment number of client, if any, e.g., #3A; flush right: the client's telephone number, e.g., 576-9876.
   (CIF page 1: line 3)
4. (Unmarked line) This should contain the client's nickname in parenthesis, e.g., "Speedy Joe",
   (CIF page 1: line 2)
   Flush right: the name or relationship of the person whose telephone number appears immediately above, if not the client's e.g., sister, Mary Jones.
   (CIF page 1: line 3, notes)

RIGHT COLUMN

1. Name of the PDS attorney, e.g., Sam Spade.
   (CIF page 1: top left)
2. Name of the court or branch, e.g., Superior.
   (In Court Case #box, CIF page 1: top)
3. The assigned court case number, e.g., 7568-73.
   (CIF page 1: top left)
4. The DCDC #, e.g., 8765-8976.
   (CIF page 1: top left)
5. The CCR #, e.g., 645-867.
   (CIF page 1: top left)

Name/DOB	William Charles Jones	12/15/40
Address	1234 Connecticut Ave., N.W.	
Apt #/Phone	# 3A	576-9876
	(Speedy Joe)	Sister, Mary Jones

Sam Spade	PDS Attorney
Superior	Court
7568-73	Case #
8765-8976	DCDC #
645-867	CCR #

5. The name of the "Contact person which will be circled on the C.I.F., e.g., Samuel Hayes; flush right, the relationship to the client, e.g., friend.
   (C.I.F. page 1: bottom)
6. The "Contact's" address in full, e.g. 1236 Connecticut Ave. N.W.
   (C.I.F. page 1: bottom)
7. The "Contact's" apartment number; flush right, the "Contact's" telephone number, preceded by a capital "B" if the number is a business number, e.g., B765-7654.
   (C.I.F. page 1: bottom)
8. (Unmarked line) This line may be used for other information on the "contact" (e.g., "close friend of family) but otherwise should be left blank.

Contact/Rel.	Samuel Hayes	Friend
Address	1236 Connecticut Ave., N.W.	
Apt #/Phone		B 765-7654

9. The name of the client's employer (optionally, the client's last employer if he is now unemployed but this should be identified by the word "last" immediately before the name, e.g., Last, Acme Finishing Co.; flush right, the date on which the client began work at his current employer (optionally, the beginning and ending dates of the client's previous employment, or, if the beginning date is not available, the ending date, preceded by the word "Ended", e.g., Ended 10/6/72.
   (C.I.F. page 1: middle)
10. Employer's Address, e.g., 7654 16th St. N.W.
    (C.I.F. page 1: middle)
11. Employer's phone number, e.g., 876-4567.
    (C.I.F. page 1: middle)
12. The name of the client's supervisor at work followed by his telephone number if different from the employer's, e.g., Foreman Johnson (876-2345).
    (C.I.F. page 1: middle)
13. (Unmarked line) This line should contain the client's job title if it is meaningful and otherwise his "line of work", e.g., plasterer; flush right, the client's pay rate per period, e.g., $89/wk.
    (C.I.F. page 1: middle)

Employer/Since	Last, Acme Finishing Co.	10/6/72
Address	7654 16th St., N.W.	(Ended)
Phone	876-4567	
Job Superv.	Foreman Bob Johnson	(876-2345)
	Plasterer	$89/wk.

6. The date of the incident for which the client is charged, e.g., 8/8/73.
   (C.I.F. page 3: line 6)
7. The date of arrest of the client, e.g., 8/9/73.
   (C.I.F. page 3: line 6)
8. The date on which the client was interviewed by the P.D.S. attorney, e.g., 8/10/73.
   (C.I.F. page 1: botton)

8/8/73	D/O/Incident
8/9/73	D/O/Arrest
8/10/73	D/O/Interview

9. An abbreviation of the charges reflected in the complaint (see the Table of Abbreviations), e.g., ADW.
10. More charges if more space is needed.
11. The type of action, e.g., felony.
12. The client's status in terms of bail (see the Symbol Table, e.g., 1500-Out.
    (C.I.F. page 2: middle)
13. Date of client's next appointment with the P.D.S. attorney, if given on the C.I.F., e.g., 8/17/73, 10:30 a.m.
    (C.I.F. page 1: top left)

ADW	Charges
Felony	Type of Action
5500-Out	Bail Status
8/17/73	Appmt w/Atty

14. Name of the client's current parole or probation officer. Identify which: "Prob" or "Par", e.g. Robert H. Smith (Prob).
(C.I.F. page 2: middle)
15. The parole or probation officer's telephone number, e.g., 876-5678.
(C.I.F. page 2: middle)
16. Unmarked line.

Parole/Prob Off	Robert H. Smith (Prob)
Phone	876-5678

17. and following lines: Names, addresses and telephone numbers of the witnesses as given in the C.I.F.; do not mark the designations "FR/UNF"
(C.I.F. page 3: middle)

Witnesses	Mary Harris (Mrs. Patrick)	FR/UNF
Address	1609 New Hamp. Ave., N.W.	
Apt # /Phone	#604	987-5678

Witness		FR/UNF
Address		
Apt # /Phone		

Witness		FR/UNF
Address		
Apt # /Phone		

14. The approximate date of trial: leave this line blank.
15. The client's next court date, e.g., 8/23/73.
(C.I.F. page 3: line 4)
16. Unmarked line.

	App. D/O/Trial
8/23/73	Next Ct Date

17. Other charges pending against the client but not involved in P.D.S. representation; use same form as "Charges" e.g., ADW.
(C.I.F. page 2: line 6)
18. Attorney representing client on the other Pending Charges, e.g., John Smith.
(C.I.F. page 2: line 6)
19. The attorney's phone number, e.g., 234-8871.
(C.I.F. page 2: line 6)

ADW	Pend. Charges
John Smith	Attorney
234-8871	Phone

20. The location of the incident; e.g., 16th and New Hampshire Ave., N.W.
(C.I.F. page 3: line 6)
21. and following lines: if there are co-defendants (e.g., Richard J. Compton) list them one to a line followed by their charges in parentheses ('ADW") and in a second parentheses the name of the attorney representing each ("Thomas Brown").
(C.I.F. page 3: line 8)

16th & New Hamp., N.W.	Location of Incident
Richard J. Compton (ADW)	Co-defendants
6291-72/Thomas Brown	(Case #/Atty)

29. Name of complainant, e.g., Patrick Harris. (C.I.F. page 2: line 15)
30. Complainant's address, e.g., 1609 New Hampshire Avenue, N.W. (C.I.F. page 2: line 16)
31. Apartment number, if any, of complainant, e.g., #604. Flush right: complainant's telephone number, e.g., 987-5678. (C.I.F. page 2: line 16)

Witness		FR/UNF	Patrick Harris	Complainant
Address			1609 New Hamp., N.W.	Address
Apt # /Phone			#604 987-5678	Apt # /Phone

CHARGES ABBREVIATION TABLE:

(Attempt is a prefix separated from the main offense by a semi-colon, for example: "ATT: MUR/1")

- ADW Assault with a Deadly Weapon
  - ASS: Simple Assault
  - THR: Threats
  - CDW: Carrying a Dangerous Weapon
  - PPW: Possession of Prohibited Weapon
  - CPWOL: Carrying Pistol without License
- MUR/1: Murder-First Degree
  - MUR/2: Murder-Second Degree
  - MANS: Manslaughter
  - ADW: Assault with a Dangerous Weapon
  - AWIK: Assault with Intent to Kill
  - NEGHOM: Negligent Homocide
- ROB: Robbery
  - AWIR: Assault with Intent to Rob
  - PLAR: Petty Larceny
- BURG/1: Burglary-First Degree
  - BURG/2: Burglary-Second Degree
  - UE: Unlawful Entry
  - DPP: Destroying Private Property
  - GLAR: Grand Larceny
- GRSP: Receiving Stolen Property ($100 or more)
  - PRSP: Receiving Stolen Property (less than $100)
  - TPWR: Taking Property without Right
- EMB: Embezzlement
  - LAR/AT: Larceny after Trust
- GFP: False Pretenses ($100 or more)
  - PFP: False Pretenses (less than $100)
- RAPE: Rape
  - AWICR: Assault with Intent to Commit Rape
  - ADUL: Adultery not prosecuted
  - FORN: Fornication
- INLIB: Indecent Liberties (Miller Act)
  - ENT: Enticing or Alluring
  - INACT: Indecent Act
- CARKN: Carnal Knowledge
  - ASS/CARKN: Assault with Intent to Commit Carnal Knowledge
- VNA: Narcotics Act Violation
  - CSA: Controlled Substances Act Violation
  - DDA: Dangerous Drug Act

BAIL STATUS ABBREVIATION TABLE

ROR: Released on Own Recognizance

3PC(Smith): 3rd party custody; name of custodian

1500-Out: Bail bond set at $1500.00; bond posted; client out

150 Cash-out: Cash bail set at $150; cash posted; client out

1500 (DC): Bail bond set at $1500; client at D.C. Jail

1500 (Lor): Bail bond set at $1500; client at Lorton

(RH): Client remanded to Receiving Home

Diversion Program Name (Crossroad, etc.): Client placed in diversion program

MO-St. E: Mental observation commitment

Name/DOB
Address
Apt #/Phone

Contact/Rel.
Address
Apt #/Phone

Employer/Since
Address
Phone
Job Superv.

Parole/Prob Off
Phone

Witnesses
Address
Apt #/Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

PDS Attorney
Court
Case #
DCDC #
CCR #

D/O/Incident
D/O/Arrest
D/O/Interview

Charges

Type of Action

Bail Status
Appmt w/Atty

App. D/O/Trial
Next Ct Date

Pend. Charges
Attorney
Phone

Location of Incident
Co-defendants
(Case #/Atty)

Complainant
Address
Apt #/Phone

	ORD:	ASSIGNED	DUE	CHECK IF RETURNED ☐
	INV:	ASSIGNED	DUE	CHECK IF RETURNED ☐
	AIDE:	ASSIGNED	DUE	CHECK IF RETURNED ☐

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PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA / 628-1200

ORIGINAL FOR FILE

Name/DOB
Address
Apt #/Phone

Contact/Rel.
Address
Apt #/Phone

Employer/Since
Address
Phone
Job Superv.

Parole/Prob Off
Phone

Witnesses
Address
Apt #/Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

PDS Attorney
Court
Case #
DCDC #
CCR #

D/O/Incident
D/O/Arrest
D/O/Interview

Charges

Type of Action

Bail Status
Appmt w/Atty

App. D/O/Trial
Next Ct Date

Pend. Charges
Attorney
Phone

Location of
Incident
Co-defendants
(Case #/Atty)

Complainant
Address
Apt #/Phone

Facts:	Assigned To:	Date Assigned	Due
	Witnesses to be Interviewed/Specific Questions		
	Other Areas of Investigation:		
	Continued On Reverse ☐		
	ATTACH POLICE RECORD AND/OR PD 251		

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PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA / 628-1200

REQUEST FOR INVESTIGATION

Name/DOB Address Apt #/Phone			PDS Attorney Court Case # DCDC # CCR #
Contact/Rel. Address Apt #/Phone			D/O/Incident D/O/Arrest D/O/Interview
Employer/Since Address Phone Job Superv.			Charges Type of Action
			Bail Status Appmt w/Atty
Parole/Prob Off Phone			App. D/O/Trial Next Ct Date
Witnesses Address Apt #/Phone	FR/UNF		Pend. Charges Attorney Phone
Witness Address Apt # /Phone	FR/UNF		Location of Incident Co-defendants (Case #/Atty)
Witness Address Apt # /Phone	FR/UNF		
Witness Address Apt # /Phone	FR/UNF		Complainant Address Apt #/Phone

Preliminary Report of Defendant Study Needed for:

☐ **BOND MOTION** ON:

☐ **PRE-TRIAL DISCUSSION** ON:

☐ **TRIAL** ON:

☐ **SENTENCING** ON:

Assigned To: Date Assigned Due

☐ **EMPLOYMENT**
☐ **JOB TRAINING**
☐ **HOUSING**
☐ **MATERIAL ASSISTANCE**
☐ **PSYCHOLOGICAL EVALU.**
☐ **PSYCHIATRIC EXAM.**

Note Other Information Necessary for ORD Evaluation:

Present Location of Defendant:

ATTACH POLICE RECORD AND BOND ORDER

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PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA / 628-1200

OFFENDER REHABILITATION DIVISION

Name/DOB
Address
Apt #/Phone

Contact/Rel.
Address
Apt #/Phone

Employer/Since
Address
Phone
Job Superv.

Parole/Prob Off
Phone

Witnesses
Address
Apt #/Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

Witness
Address
Apt # /Phone
FR/UNF

PDS Attorney
Court
Case #
DCDC #
CCR #

D/O/Incident
D/O/Arrest
D/O/Interview

Charges

Type of Action

Bail Status
Appmt w/Atty

App. D/O/Trial
Next Ct Date

Pend. Charges
Attorney
Phone

Location of
Incident
Co-defendants
(Case #/Atty)

Complainant
Address
Apt #/Phone

Assignment:
☐ Meet Attorney
☐ Pick Up
☐ Deliver
☐ Return
☐ File
☐ Locate
☐ Get Information
☐ Get Copies No. ____________
☐ Get Certified Copies:
☐ Serve Subpoena

☐ PD 251
☐ Arrest Record

☐ Letter
☐ Court Record
☐ Medical Record
☐ Motion/Brief
☐ Evidence
☐ Client
☐ Witness
☐ Charges
☐ Bail Agency Report & Bond
☐ Line Up Order & Affidavit
☐ Docket/Jacket Entries
☐ Entire File

Record of: Case #

☐ Name of Co-Def's Attorney:
☐ Name of AUSA:
☐ Prelim. Hearing Date:
☐ Continued Date:
☐ Trial Date:

Warrant: Issued Executed ☐ Superior ☐ Magistrate
☐ Search
☐ Arrest
☐ Bench
Also Get Affidavit & Return
Warrant Number
Address Searched
Evidence Returned

Assigned To:	By	Date Assgd.	Due	Time

Name
Location
Room/ Apt #/ Floor Phone
Return or Report To: Where:

Court Next Ct. Date: ____________
☐ Superior
☐ Misd. ☐ Fel/Pre-Ind. ☐ Fel/Post-Ind. : Judge
☐ Juvenile
☐ US Magistrate: ☐ Burnett ☐ Dwyer ☐ Margolis
☐ US District Court Judge:

Notes:

Memo Attached ☐

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PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA / 628-1200

AIDE ASSIGNMENT

Name/DOB Address Apt #/Phone	
Contact/Rel. Address Apt #/Phone	
Employer/Since Address Phone Job Superv.	
Parole/Prob Off Phone	

	PDS Attorney Court Case # DCDC # CCR #
	D/O/Incident D/O/Arrest D/O/Interview
	Charges
	Type of Actic
	Bail Status Appmt w/Atty
	App. D/O/Tria Next Ct Date

NEW CASE REPORT

(CUT ALONG THIS LINE)

PRESCRIPTIVE PACKAGE: "Paralegals: A Resource for Public Defenders and Correctional Services"

To help LEAA better evaluate the usefulness of Prescriptive Packages, the reader is requested to answer and return the following questions.

1. What is your general reaction to this Prescriptive Package?
☐ Excellent ☐ Above Average ☐ Average ☐ Poor ☐ Useless

2. Does this package represent best available knowledge and experience?
☐ No better single document available
☐ Excellent, but some changes required (please comment)
☐ Satisfactory, but changes required (please comment)
☐ Does not represent best knowledge or experience (please comment)

3. To what extent do you see the package as being useful in terms of: (check one box on each line)

	Highly Useful	Of Some Use	Not Useful
Modifying existing projects	☐	☐	☐
Training personnel	☐	☐	☐
Adminstering on-going projects	☐	☐	☐
Providing new or important information	☐	☐	☐
Developing or implementing new projects	☐	☐	☐

4. To what specific use, if any, have you put or do you plan to put this particular package?
☐ Modifying existing projects
☐ Administering on-going projects
☐ Others:
☐ Training personnel
☐ Developing or implementing new projects

5. In what ways, if any, could the package be improved: (please specify), e.g. structure/organization; content/coverage; objectivity; writing style; other)

6. Do you feel that further training or technical assistance is needed and desired on this topic? If so, please specify needs.

7. In what other specific areas of the criminal justice system do you think a Prescriptive Package is most needed?

8. How did this package come to your attention? (check one or more)
☐ LEAA mailing of package
☐ Contact with LEAA staff
☐ LEAA Newsletter
☐ Other (please specify)
☐ Your organization's library
☐ National Criminal Justice Reference Service

9. Check ONE item below which best describes your affiliation with law enforcement or criminal justice. If the item checked has an asterisk (*), please also check the related level, i.e.

☐ Federal ☐ State ☐ County ☐ Local

☐ Headquarters, LEAA
☐ LEAA Regional Office
☐ State Planning Agency
☐ Regional SPA Office
☐ College/University
☐ Commercial/Industrial Firm
☐ Citizen Group
☐ Police *
☐ Court *
☐ Correctional Agency *
☐ Legislative Body *
☐ Other Government Agency *
☐ Professional Association *
☐ Crime Prevention Group *

10. Your Name ________________
Your Position ________________
Organization or Agency ________________
Address ________________
____
Telephone Number Area Code: ________ Number: ________

(fold here first)

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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

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